

THIRD QUARTER

## PAPERS

OF THE

# AMERICAN HISTORICAL ASSOCIATION

VOL. IV

JULY, 1900

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C. P. PUTNAM

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Organized at Saratoga, N. Y., September 20, 1884.

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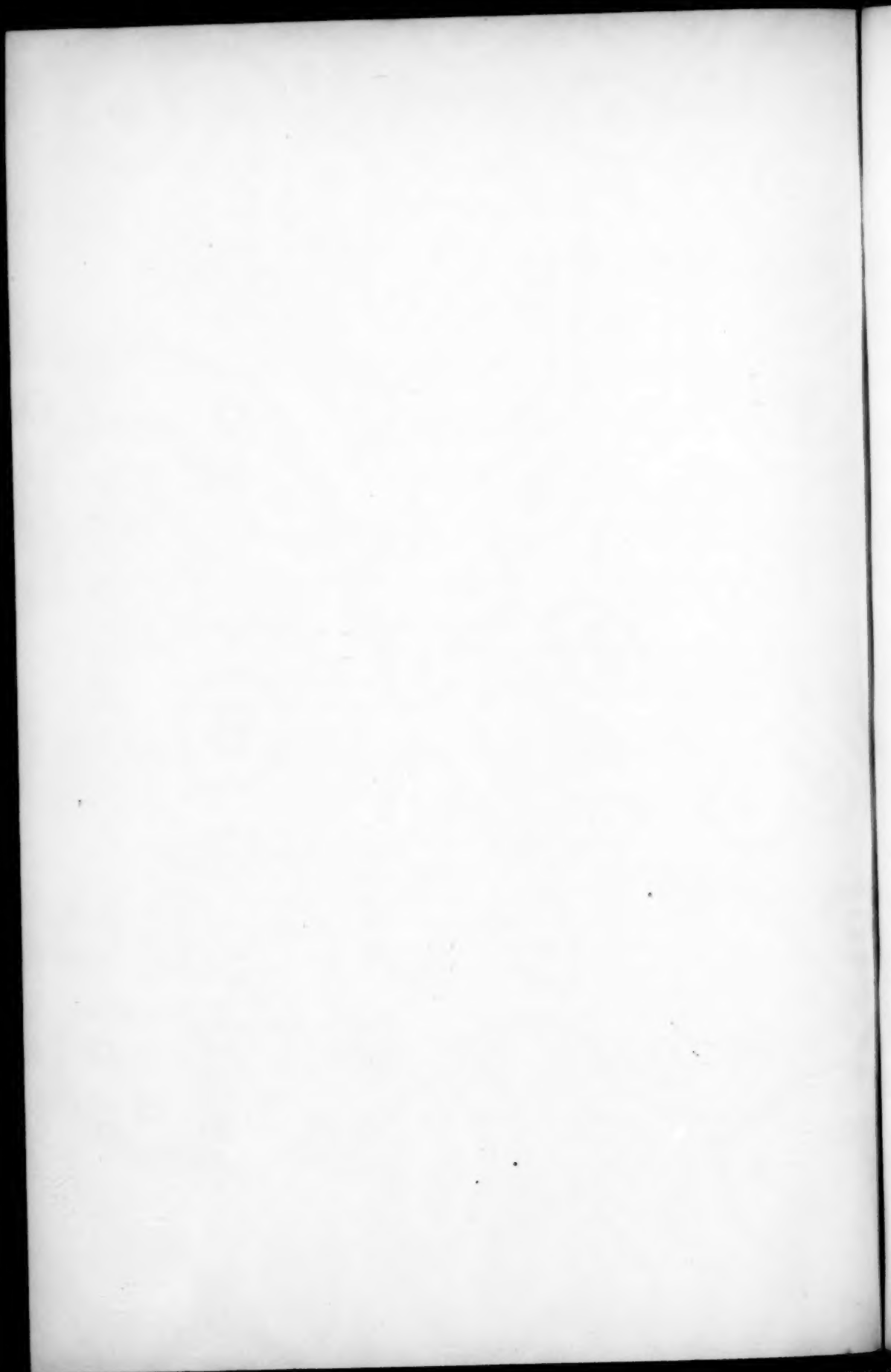
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## ACT OF INCORPORATION.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Andrew D. White, of Ithaca, in the State of New York; George Bancroft, of Washington, in the District of Columbia; Justin Wilson, of Cambridge, in the State of Massachusetts; William F. Poole, of Chicago, in the State of Illinois; Herbert B. Adams, of Baltimore, in the State of Maryland; Clarence W. Bowen, of Brooklyn, in the State of New York; their associates and successors, are hereby created in the District of Columbia a body corporate and politic, by the name of the American Historical Association, for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred purposes in the interest of American history and of history in America. Said Association is authorized to hold real and personal estate in the District of Columbia so far only as may be necessary to its lawful ends to an amount not exceeding five hundred thousand dollars, to adopt a constitution, and to make by-laws not inconsistent with law. Said Association shall have its principal office at Washington, in the District of Columbia, and may hold its annual meetings in such places as the said incorporation shall determine. Said Association shall report annually to the Secretary of the Smithsonian Institution concerning its proceedings and the condition of historical study in America. Said Secretary shall communicate to Congress the whole of such reports, or such portions thereof as he shall see fit. The Reports of the Smithsonian Institution are authorized to permit said Association to deposit its collections, manuscripts, books, pamphlets, and other material for history in the Smithsonian Institution or in the National Museum at their direction, upon such conditions and under such rules as they shall prescribe.

[Approved, January 4, 1885.]

THE MUTUAL OBLIGATION OF THE ETHNOLO-  
GIST AND THE HISTORIAN.





## THE MUTUAL OBLIGATION OF THE ETHNOLOGIST AND THE HISTORIAN.

By OTIS T. MASON, Curator of the Department of Ethnology, U. S. National Museum.

A traveller visiting the northern Shoshones in Idaho, was much puzzled one day to hear his Indian guide narrate a weird story about a man with a stone shirt, who performed many wonderful feats among his tribe, and whose blouse of stone was impervious to any arrow.

Interested beyond measure by this latest addition to the *dramatis personæ* of aboriginal mythology, the traveller essayed in vain to associate this new Hiawatha with something in the heavens above, or in the earth beneath, or in the waters under the earth of Idaho.

Imagine his immense delight and relief when, shortly afterwards, he read that the ancestors of these Indians had once lived in the south, the land of the armadillo, the real man with the stone shirt that no arrow would pierce. The ethnologist was, in this instance, servant to the historian, without whose kind offices the hero with imperishable armor would have remained forever unexplained.

It is a little difficult to draw the line of demarcation between history and ethnology, for there is no great gulf separating these studies or the men engaged in them. When a voyager brings us an account of a tribe or people, describing their persons, dress, habitations, industries, language, social system, and religion, we call him an *ethnographer*, especially if he collects specimens illustrative of these, and pictures showing their *modus vivendi* or *operandi*. A journal devoted to the work of those who collect such information or speci-

mens or pictures, might be styled a *Zeitschrift für Ethnographie*, *Révue d'Ethnographie*, *Ethnographic Journal*, etc., according to the country where it might be published.

When, in the museum, the cabinet, and the library, the scholar combines these specimens and pictures and narratives for the purpose of comparing them and getting a just appreciation of this or that people, or for the purpose of studying what one might call the natural history of men, of arts, of languages, of beliefs, of customs, he is called an ethnologist, and a periodical devoted to such work is a *Journal of Ethnology*.

I shall not attempt to define in this presence the function of the historiographer or of the historian. The muse of ethnology has never had a statue. If the world ever honor her with one, she will doubtless be represented with pick and shovel, with specimen boxes, with a camera, or perchance with a full set of anthropometric apparatus. Her clothes will be soiled with Eskimo grease, with Indian paint, with African dirt, with the dust of ages. Clio, the muse of history, on the contrary, always looks so trig and dapper, seated on her easy-chair, holding the scroll in her left hand and surrounded with manuscripts, that only a casual glance shows her to have a very different function from that of the ethnic muse.

Now, the ethnologist as well as the ethnographer, in the prosecution of his peculiar task, is frequently at his wit's end on the occurrence of phenomena or of specimens that seem entirely out of place, so far as his ordinary apparatus of investigation and methods of working are concerned. For example, he finds a tribe of Indians in the middle of Yucatan playing on a musical instrument in essential parts identical, even in name, with one universally used in Western and Central Africa. It may be that he collects from graves or mounds in the States brass or silver ornaments of certain shapes. On the island of Sitka, perhaps, he barter with a medicine man for carved cocoa-nut shells or tusks of the Mexican peccary. I might go on enumerating an endless list of enigmas perpetually obtruding themselves on the

notice of the ethnologist. Now, it must not be supposed that this student of races becomes discouraged and gives up a question upon its first presentation. Quite the contrary. He has his standard theories and hypotheses, to the judgment of which all enigmas are brought. Two of these general principles occur to me this moment. The one is in language somewhat as follows: "Similar results in human culture are produced by similar occasions, environments, conditions." The other is: "Similar results in human culture prove either that the two peoples are one in origin, or that there has been some sort of contact or commerce between them." Bringing his musical instrument or what not *vis-à-vis* with these dicta, the ethnologist is still in a quandary. The doubtful phenomenon plays backward and forward between them like a piece in the double corner of the chequer-board, forever and forever. Happy day for him, to continue the figure, when he can invoke the friendly aid of the historian to corner the unruly doubt.

No comparative method known to the ethnologist can explain the occurrence of the Marimba in Yucatan. Abbé Morelet, who described it and the manner of using it, ventures the suggestion that it was invented on the spot. The similarity of name on the two continents, however, is too much for the ethnologist. In despair he knocks at the door of Clio, and, being emboldened by her encouraging smile, he says: "Kind Madam, have you ever heard of the Marimba?" "The Marimba? Ah, yes, indeed," said she. "I heard it first on the shores of Africa, centuries ago. After the Spanish conquerors of America had wrung all possible profit of labor from the conquered Indians, they brought slaves from Africa to take their places. There these poor creatures solaced themselves in the intermission of their toil with the piano of wood and gourd, familiar to them in their distant home. During the insurrections which followed, the negroes escaped to the wilds of Central America, and taught the savages there to fabricate and play upon the Marimba. All this," said the muse, "I wrote down long ago, and here it is for you." This accounts not only for the similarity of the

instruments on the two continents, but also for the identity of the name. The grateful student of culture would have overwhelmed the benign goddess with his caresses had she not quickly assured him that the obligation was mutual. "You remember very well," said she, "how, during the last fifty years, especially in Germany, I have depended on you to rescue me from the absurdities of my votaries. It was, indeed, at your suggestion that my own studies have been placed upon a rational basis at last." The writer happened to be present at this interesting colloquy, and will never forget how both Clio and the good ethnologist were carried off their feet with mutual admiration.

The fact of the business is, that each lost a little dignity on this occasion. Many a time before and since the Marimba incident, ethnologic dicta have robbed the historian of his head, and he has been willing to record the solemn actions of mankind not as they were, but as they ought to be. And *per contra*, the ethnologist has repaid the compliment by crediting what is recorded because it offers him an easy escape from his perplexities, to cross from one difficulty to another upon some lost Atlantis. In spite of this "little rift within the lover's lute," the ethnologist welcomes with gladness the coming of Clio and her friends within these scientific halls. We may walk in each other's company with mutual advantage. It may rejoice your hearts to know that there has been in existence for several years a Bureau of Ethnology of the Smithsonian Institution, whose function is to study the aborigines of North America. This staff of cultivated men have divided their time between the field and the library. Not less than camps, pueblos, and reservations have they explored the Jesuit Relations, the Indian Office Records and Reports, State Historical Collections, War Department Archives, Schoolcraft's ponderous volumes, Pacific Railroad Reports, Military Reconnaissances, all sorts of histories and biographies, picking out words, sentences, and paragraphs, until now it is possible to tell the name, language, and ethnic traits of the aborigines on every square mile of our domain at the time when it was discovered by the whites.

In the preparation of a single volume of contributions by this Bureau, the author, Mr. J. C. Pilling, consulted at least fifteen thousand printed works. The daily routine of the Smithsonian Institution involves the perusal of all the current historical and narrative products of the press and a systematic card cataloguing of line upon line, so as to bring together the world's information upon its peoples and their occupations. A traveller describing the plants of Australia casually mentions that the *acacia excelsa* is used by the natives in making boomerangs. Down it goes. Cicero in his letters thanks a friend for the gift of a wooden lamp. Down that goes. It is by this piecing process that we hope to reconstruct, with the help of the historian, the mosaic of civilization. Then the technologic instinct steps in and suggests: Are you quite sure that the Romans or Greeks used wooden lamps? Well, yes. Forsyth comments on the object as a lamp. But he was an historian only. Let us inquire further. So together they review the question, and conclude that Cicero had received not a lamp, but a beautiful carved lamp-stand of wood.

I was very much delighted to find, this summer, Prof. A. B. Meyer, one of the foremost ethnologists in Europe, pursuing the same process in the Dresden. Two of the most popular and standard modern works on ethnology, Sir John Lubbock's "Origin of Civilization," and Tylor's "Primitive Culture," are made up by a kind of literary book-keeping; they are journalized and posted accounts of races and industries for which the whole world has furnished the blotter.

At Cambridge, Mass., last May, the same process of partnership with the historian was in vogue. It is true that the distinguished curator of the Peabody Museum spends most of his time in the rôle and garb of the ethnic muse; but the Librarian of Harvard University will bear testimony that Mr. Lucien Carr's rummaging among the volumes under his care is hardly second in diligence and thoroughness to Mr. Putnam's researches in the mounds. That these eminent gentlemen have reached somewhat different conclusions is no disparagement to either method.



It is hardly necessary to dwell upon the ethno-historic researches of Dr. D. G. Brinton, J. Gilmary Shea, Francis Parkman, Dr. E. Slafter, A. F. Bandelier, H. H. Bancroft, or Edward Eggleston. These men have never wearied in their work; they have been only sorry that there were no more volumes to plunder.

The many toilsome hours that the ethnologist has spent poring over thousands and thousands of pages of historic chaff for one precious grain of ethnic wheat, saying to himself all the while: Oh, that the tongue of this ready writer had said just one word more, had dropped in just a little foot-note here and there! are the most eloquent testimony to his daily dependence on your records in the last resort. I can hear him groaning out this fervent prayer: Dear Clio, if thou hadst foreseen my toilsome searchings, my painful doubts and despair, thou wouldst forsooth have omitted much from thy pages, but have recorded more, that seemed unworthy of thy notice. If thy foresight could have caught a glimpse of our necessities, we should now know by what illumination the "dainty-fingered painters left those harpers, clothed in white, sweeping the cords of their ten-stringed instruments on the walls in Thebes' dark funereal vaults"; we should understand the engineering by which obelisks and sphinxes were moved from their quarries and set up hundreds of miles away; we should be rid of ten thousand doubts that swim around and torment us in our work; and Kinglake would never have written: "We must give up that speechless past, in fact or philosophy, in doctrine or mythology, at Thebes, at Palenque, on Salisbury plain or Lycian shore; lost is lost, and gone is gone forever."

There is no better example of the practical relationship between the ethnologist and the historian than one furnished by our own country. Doubtless all present are aware of the efforts made by James Adair and Kingsborough to prove that the North American Indians were identical with the ten lost tribes of Israel. Ever since these gentlemen set up their claim, most scholars, denying the possibility of their

conclusions, have also discredited their statements about the aborigines. It has been quite the fashion to hold these deluded individuals up to public ridicule as the personification of absurdity.

Since their day more and more has been learned about the social structure and industries both of Indians and Israelites. The ethnologist has conned his lesson better, the historian has reviewed his studies with brighter light and abler helps. The consequence is that the veracity of Adair and others is vindicated.

To be sure, the conclusion of descent from similarity of customs is simply a *non sequitur*; it does not vitiate their statements. These resemblances between the two peoples, whatever they may be, can be accounted for by causes now well known to the ethnologist.

It was an auspicious day for the students of the natural history of man when the American Historical Association allied itself with the Smithsonian Institution, giving promise that the two histories, that written in things and that written in words, will be studied here side by side. The President of this Association struck a sympathetic chord when he said in his inaugural address: "All things are now studied by the historic method." The echo of his words can be heard in every hall and court and range and alcove of the National Museum. He might also have said: "And history is being written by the ethnologic method."

The historian has changed his pronoun from "he" to "they," and busies himself more with the organizations, beliefs, and activities of peoples, of nations, of great masses of men and women, without neglecting the minutiae of individual motive and actions.

The museums of London, Paris, Berlin, Vienna, and pre-eminently those of Stockholm and Copenhagen, receive their most valuable support, not from government appropriation directly, but from the friendly co-operation of government bureaus, learned societies, interested and generous individuals, travellers, and missionaries. The beneficent effect of this personal aid is visible in the richness and

variety of these great collections. May we not hope that this Historical Association will add still more to the obligations already outstanding against our institution, and become one of the most generous benefactors of our ethnological collections.



HISTORICAL SURVIVALS IN MOROCCO.



## HISTORICAL SURVIVALS IN MOROCCO.

BY TALCOTT WILLIAMS.

In the present record of one phase of my observations during a brief trip in Northern Morocco in April and May of 1889, I have ventured to address myself to a subject of interest rather to the historical student than to the student of history. In much historical work the facts of the present which throw light on the records of the past are of quite as much importance as existing records which throw light on past facts. My itinerary was limited to the ordinary routes of travel in a little travelled land. It extended from Tangier to Tetuan, across the northern extremity of Morocco, passing over a slope whose streams discharge into the Straits and the Mediterranean, and which has always been the home or harrying-ground of the Riff or Berber mountaineer, then south to Fez by way of the Roman outpost Al Kazar and the more recent sacred city of Western Islam, Wazan. Returning, the route lay first to Mequinez and then to Tangier by way of Volubilis, the *ultima castra* of the *ultima provincia*, passing along the sea-coast by the cities Araish and Azilla, one an early outpost of Phœnicia fourteen centuries before Christ, and the other an equally early outpost of Portugal as many centuries after our era. Such a trip begins and ends at the one point where every invasion of Europe from Africa has been made. It skirts in the first stretch the northern tine of the opening fork of the Atlas system, whose western extremity curves to Cape Spartel, matched in Spain by the Sierra Nevada with its reverse curve bending to its southern analogue to form the cusp-like opening of the straits of

Gibraltar. The southern march skirts the foot-hills of the Moroccan littoral, now a sandy but fertile plain extending to the southern fork of the Atlas bounding Southern Morocco. The northern return follows the low Atlantic coast, whose absence of harbors for a longer stretch than at any other point from Hammerfest to Cape Town explains the seaward isolation of Morocco. This littoral was in recent geological times a shallow bay, its sand dunes have half covered at the mouth of the Koos or Lukos one of the best preserved of Phœnician forts, and in the valley of the same river Sebastian of Portugal met the defeat which began the slow ebb of Portuguese colonial power, last registered on the Shire at the opposite corner of Africa. From these sandy plains rise the scarped dolomitic limestones of the Atlas, and in one of the enclosed elevated plains familiar in such a formation are the twin capitals of Northern Morocco, the rival capitals and strongholds of the early Berber confederacy under Muley Edris, which succeeded the early conquest of the Omayyad Caliphate, just as Volubilis, the southern outpost of Rome, lies on a spur of the Atlas outside this enclosed plain.

If such a route begins with the gateway by which Spain has always been entered from the south, whether by Hanno and Hannibal, by Tarik and Moussa, or by Yusuf ben Tashufin and Yakub Al Mansor, it ends at Fez, the gate to the caravan trade of the interior, which led first Phœnicia and then Portugal to the trade of a harborless coast. Between this tract and the continuous life and development of the more central stretch of North African coast in Algeria and Tunis to-day and in Carthage and Utica earlier, are interposed the unconquerable Riff mountaineers, whose unsubdued heights stretch from in sight of the Moslem Sultan's capital to the range skirting the Mediterranean, the most familiar sheet of water in human history, from which it is possible to-day off the coast of Northern Morocco to look on heights held by the Riff or Berbers, whose reverse slopes remain unsurveyed and unvisited by European explorers. These heights are alone in the encircling hills of the Mediterranean in having kept at bay all conquest. Untrodden by the legions of

Rome, whose provincial ruler reached Tingis—now Tangier—always by water and never by land from Carthage, because the mountains between were unsubdued; the despatches of the winter record the repulse of the Sultan of Morocco on their flanks. Even on a holiday trip like my own, the traveller enjoys the novel sensation of turning aside from a region through which Rome carried no road and whose historical inaccessibility survives through twenty recorded centuries.

It is doubtless because Morocco is thus enveloped landward and seaward, because it received and held untouched by the East an early Arab invasion, and because its historical contact since this invasion has been with mediæval Spain rather than with mediæval Islam, that the most rapid observation is full of the record and suggestion of primitive institutions. Elsewhere on the Mediterranean these customs, symbols, and institutions have disappeared. In the West, to develop into the great structure of Roman and Teutonic law with which we are familiar. In the East, to harden into the unyielding lines of Oriental administration in Turkey and elsewhere, full of puzzles like those of a pseudomorphic crystal, where the vigor of the steppes or the intellect of the desert have been poured into the empty moulds and casts of Byzantine institutions. Morocco has never been through this process and offers the opportunity to study a nation still in that loose, nascent state of arrested development, in which the germs of hosts of institutions are still apparent. "Europe ought," said Signor Cantugalli, the Italian Minister at Tangier, "to subscribe to keep Morocco as it is, a national museum of mediæval customs and institutions." The acute and penetrating phrase does not exaggerate the extent to which the student discovers the conditions of the past still affecting the life of the present. The gate at Tangier carries, as does many a wall and doorway in Morocco, the open hand, which stands everywhere as a talisman against the evil eye, not unknown elsewhere in the East, but nowhere so frequent. The same symbol survives on the "Gate of Justice" at the Alhambra. It has had there and

elsewhere many a fanciful explanation; but as the Phœnician tombs at the *Bibliothèque Nationale* at Paris bear it, and it is frequent on Punic inscriptions, I may be pardoned for suggesting that it is simply the survival of Phœnician influence on the African coast. It stands to-day over the custom-house gate at Tangier, just as it doubtless stood over the Punic toll-gate whose warder's rocky tombs are slowly crumbling in the cliffs back of the town. Personally, I was ready to find myself carried far back in the centuries when I was about to leave the only foothold of civilization at Tangier, where a cable had just been landed along the old familiar track of trade and conquest for North Africa, from Gibraltar. But when my letters of safe-conduct from the Sultan and Minister of Foreign Affairs came, I was scarcely prepared to find myself designated not as an American as I was, nor as a Frank, as I would have once been in the Levant, but as "er Roumi," the Roman! I felt that the shrill cry of all Dr. Freeman's embattled sentences, in which for thirty years he has cried aloud and spared not the reminder of the mediæval use of the term Roman, had its justification in this visible proof that the Christian in the land of the Infidel was still, in Morocco, whatever his nationality, Roman.

The term Roumi survives in various Eastern tongues as the name of a creed, the designation of a nation, and the title of more than one territory. Without the later confines of the later Roman Empire, to return to them is still to move Romeward or westward. If it yet retains in Morocco the broad use which still distinguished in my own proper person civilization from barbarism and Christian from Infidel, it was because I stood on the solitary stretch of all the Mohammedan coast of the Mediterranean where the tides of the Crusades had never broken from the march of Godfrey to the martyrdom of Louis to remind the Oriental world that the valor of the Frank had replaced the discipline of Rome. Where the crusades went, the European is Frangi, where, as here, they did not enter, he is still Roman, and it may give us a fresh conception of the fashion in



which in the Iberian peninsula the shadow of Rome perdured in a period we are but too apt to surrender to the barren annals of the Visigoths, that all entering from Spain are still in the official and ordinary phrase of Morocco, Romans. Nor was this the only survival in my letter. I was to travel, thanks to the courtesy of our Consul, as his representative, and my letters accordingly designated me, not as they would in the farther East by any one of a dozen phrases as his deputy, but by a title surviving from the earliest Moslem annals as "Caliph." This is still in Morocco in use for deputy, just as in some Turkish villages, the ragged head-man is still known as "Sultan." The result was that during my trip I was constantly hearing from countrymen questions about the plans of the "Romans" and as constantly heard myself given by my men the ancient and sacrosanct title of "Caliph" still familiarly used in its original sense of deputy. I may add, as I have pointed out in a paper on the "Arabic dialect of Morocco," a large number of the daily and familiar official titles of early Moham-medan history survive in Morocco, while elsewhere they have given place to Tartar or to Persian terms.

The letters of safe conduct with which I travelled, a familiar incident of Oriental travel, were themselves proof of the existence of conditions which once made such letters universal and general in all travel save by the trader. Free communication has made us forget that a permit to travel was once necessary in all lands to secure food from a suspicious peasantry or assure safety from local lords about whose intentions there was no suspicion whatever. My letters, in enjoining that I should receive guard, shelter, and food on demand and in holding the whole country-side responsible for my safety, carried the germs of that great system of the rights of the traveller and the laws of the inn, which in Morocco made every village where I camped furnish a guard for my tents, and in the United States raise the point whether a sleeping-car is an inn so far as valuables are concerned. It may also modify the view which we take of the use or abuse of letters of safe-conduct in the past, if we stop to con-

sider that they were often not special guaranties of safety, but simply the ordinary permit for travel and grant of protection, so constantly issued that they had ceased, as had mine, to indicate any special interest by the government in my safety. It was an interesting survival also that the Sultan's letter was signed with a mark. The present Sultan, Muley Hassan, the ablest of his house, is a highly educated man, who uses written orders with the freedom customary at an Oriental court, where verbal orders are few although verbal justice is frequent. More than one historical student who has come in contact with the original documents, has, I feel sure, been amazed at the enormous number of papers which a busy and energetic mediæval or post-mediæval sovereign will have signed and often written. The scattered archives of the Assyrian monarchy leave at times the same impression of perpetual personal orders. But this is an inevitable incident of the loosely defined powers of a despotism whose essential evil is that no one is trusted with authority but the sovereign and that he dare trust no one else. At Fez, I found this same machinery, or lack of it, in full operation, and every morning the ruler of Morocco spends hours—as did more than one familiar figure in our studies—rapidly writing and signing orders on every conceivable subject, from an increase in the number of horses allotted an English officer in his service or a grant of fifty cents a day to two holy "Sherifs" from Mecca, up to the disposition of a province or the decapitation of its governor. But the signature of these orders is not the name by which he is known and which he would have used before becoming Sultan, but a mark, adopted by each successive Sultan for himself and familiar to all the official class in the Empire. The Emperor of China is, I believe, the only other sovereign who makes his mark, instead of signing his name or initials; a survival doubtless of a day when letters were deemed beneath the dignity of a ruler or boss, a tradition not without its survival in our own affairs.

Equipped with his letters, the traveller in Morocco has but one method of travel before him,—in the saddle, with



his own guard and servants and his own tents. These familiar conditions of Oriental travel have been too often described to need remark. Morocco, in addition, is without mails and lacks the relays of horses which over the Turkish Empire are survivals of the *cursus publicus*, borrowed by Augustus from the Persian system, whose extreme Eastern successor is the Indian *dak*. In Turkey, a *diploma*—as a permission to use the post, or obtain the right of *evectio*, was called after the second century—can still be obtained. Nothing of the kind exists in Morocco. My men indeed urged me, when my own riding mule went lame, to make the inconvenience good by seizing one under the Sultan's letters-patent at the nearest fair, but in spite of the temptation to exercise the early royal privilege of purveyance and preëmption restricted by Magna Charta, I respected rights which too few Europeans observe away from home. The absence of roads, and the restriction of all transport to sumpter animals, donkey, mule, or camel, general in the East and once universal in all European countries, is too often accepted without a clear conception of its multitudinous effect in creating what I may most easily describe as a general social opacity in which the transmission of all social currents becomes impossible. There is no social non-conductor like a dirt trail and a loaded mule going two and a half miles an hour. The freight on a barrel of flour or an equivalent weight, for the barrel would be an awkward load for packing, one hundred and forty miles, from Fez to Tangier was, I found, about \$2.50, never much less than this, and often twice this sum. At Tangier this is equal to twelve days of unskilled labor, and at Fez to twenty. The freight on a barrel of flour from Chicago to New York is, as every one knows, about forty cents, or less than half the price of a day's labor. Half a day's labor is needed to send a single letter by the occasional messengers despatched between Tangier and Fez by merchants. With us a day's labor pays the despatch of fifty letters. But this economic friction, which renders it practically impossible to revictual a famine-stricken region much over two hundred and fifty miles dis-

tant, because in going and coming ten days' journey a mule will have nearly eaten his own load, is apparent in a social impenetrability which shortens the effective arm of the central power to the limit of one, two, or three days' journey about each city and centre of administration.

Our ingrained conception of a supreme authority has come to be associated with a pressure of force as uniform, as irresistible, and as constant as the atmosphere. Morocco is to-day in the hands of an able sovereign who has extended its boundaries, subdued the unruly, and maintained a vigorous and far-reaching jurisdiction. None the less, it was a new lesson in the inevitable conditions which attend the social opacity I have described, to find, between each city and its neighbor, an Azib or "march" of doubtful jurisdiction, given to the pasture of cattle and horses owned by some local lord strong enough to guard them for himself, and out of which was sure to grow one of those "middle kingdoms" which have so frequently modified European boundaries. These stretches, bare of villages, were always passed on the alert, the work of guarding these cattle drew the adventurous, and one could feel still alive the atmosphere which survives in border ballads and the adventurous breed of more than one European march. Where life is simple, and travel small, events which would wreck more highly organized industries pass without a ripple. In stormy or uncertain mediæval days I have found myself wondering how life went on at all, but after riding at half-past five in the morning out of Wazan a few hours before an insurgent tribe settled on it, drove out the garrison, and looted some shops, hearing a week later from a private messenger who followed with my mail—the only way in which letters are carried—that the town was quiet again and trade uninterrupted, and learning from the commander of the royal army that the place would have due attention next autumn, I could understand how slight effect serious disturbances might have had in the past to which we are apt to attribute widespread influences. Until one has seen serious disturbances having little or no effect thirty or forty miles away, it is difficult to appreciate

the administrative conditions which lack of communication, the absence of roads, and the want of intelligence produce.

Under these circumstances sovereignty shades imperceptibly from the complete control exercised at the capital and the seaports through all manner of gradations. Local overlords, religious or secular, exercise a jurisdiction and sovereignty of their own. Adjoining tribes select their own chiefs under the prescriptive family rights familiar from Arab custom, present candidates to the Sultan, or receive their sheikhs by appointment. The accidents of a march, a royal encampment, or aid given the ruling house in the past, determine these things. Villages which might have been subdued in more systematic military operations, but never were, like one I camped at, the first European to be seen there, preserve a precarious and accidental but genuine independence, free from military service or tax. We are all familiar with the efforts, too often voluminous rather than luminous, to extend and to systematize over wide reaches of territory the scattered references of charter, deed, and chronicle. I can only say that I came back from a practical contact with these mediæval conditions feeling how dangerous it was to deduce from the records of such a state of affairs an ordered scheme of rights and liberties, of jurisdiction and sovereignty. What exists to-day may be altered to-morrow, what is true of the village in the valley may be false of the village on the hill. Nay, I stopped one night at one of two Arab villages, not three miles apart, at one of which my safe-conduct from the Sultan was refused, while at the other my like letter from the Sherif of Wazan, the highest Moslem ecclesiastic of Western Africa, would have been rejected. I stopped at the Sherif's village, and the guards and precautions taken by my host showed that the Sultan's villages were paying no heed to the Sherif's protection. It was a clear case where the Duke's peace was the King's war. Yet how surely would the historical student of the future assume that the Sultan's commission to one of these villages, broad in its terms, and dealing with territory

not fifty miles from the capital, carried jurisdiction over the villages hard by.

This conflict involved no rebellion. We are familiar with the conception of a central government of limited general powers. It is less easy to remember that in a loosely organized realm, the like exists of necessity. We speak of the Government of Morocco. So one does in Turkey of the Government (Daulet) of the Sultan. But no one does in Morocco. The entire administration is so completely devoted to collecting taxes that it is known simply as the Treasury (Mukhzen). Its troops are Treasury troops, its lands Treasury lands, and more than one place has its two rulers, the local Sheikh, Emir, or Ecclesiastic, and an officer representing the Treasury. I need not recall how closely similar this must be to the original conditions which have left us England ruled by an officer whose formal title is the First Lord of the Treasury. This fact is apt to be associated exclusively with the long but comparatively recent struggle for the control of taxes. But how largely, in ways which leave no trace, the early contact of Royal Administration with the people must, as in Morocco to-day, have left the impression that it was chiefly Exchequer and little else. The Sultan, it is true, is much more. He is Caliph by descent from Hosain, the grandson of the Prophet. He recognizes no earthly superior. Yet the primitive Assembly which acclaimed rather than elected Abu Bekr still survives in the proclamation which must be made in the three great mosques of Fez, Mequinez, and Maraksh, before his title is sacrosanct, and within the last decade the privileges of this ancient Assembly were invoked in endeavoring to depose the present Sultan.

The deepest faith and reverence of an ecclesiastic for his ecclesiastical superior will not, as we are all well aware, prevent the subordinate from filching all the civil powers he can from his spiritual lord. In the larger cities, the Sultan's civil administration is represented by a governor, known as Kaid, who represents both the Treasury or Exchequer and commands the military forces of the district. The Kaid does

as much more as he can, his office year by year extending in power under a strong Sultan. Yet taxation and military command comprise the duties of the representative of the central government. In many places, without a thought of its incongruity, not to say impossibility, under our highly specialized notions, he is face to face with the head of some great family in the ruling caste who exercises all the functions of local rule and as much more power as he can. The Sherif of Wazan is the greatest of these local rulers, and reigns over a broad district, whose taxes he treats as his personal property, and whose entire administration he conducts by his own appointees. When I saw the Sultan's Kaid sitting as a comparatively insignificant guest at the Sherif's table, I felt that I was seeing exactly the position in which the King's officer often found himself at my Lord Bishop's table, and when an insurgent tribe swarmed in the next day and drove the Kaid out, they ended with prayers at the Sherif's mosque, who was exercising the benevolent and profitable neutrality of a mediæval ecclesiastic. With despotic power in a sovereign, we insensibly associate despotic opportunity. But the same social opacity, which is so difficult to comprehend until it is seen, which renders local disturbance of so little consequence, secures local government. The city wards have their own heads, sometimes selected by a traditional prescription, to which, I am convinced, we too often transfer the character of election in the past, and a group of notables, chiefly of or about the mosque, some self-chosen, carry on affairs in what is the germ of a future council. The villages, or douars, are either mountain villages, in which the village Thalab, or Moslem clergyman, was the real head, or the plain villages of Arab origin, and there the Sheikh's tent had before it a reed, a degenerate survival of the tall lance with its nodding plumes of black ostrich feathers which I had seen standing in all its warlike glories before the low, wide, black tents of the chiefs of the desert.

This division of civil power between religious and civil rulers, in which all the differentiation of government begins, creates a double judicial system. In the cities, and about



them, the military power and the keeping of the peace are in the hands of the Sultan's officer. By an obvious consequence, he exercises generally but not exclusively a criminal jurisdiction, because he has the force at hand to execute sentences. As land, inheritance, and the divisions of property all are decided by the Koran or the sacred law (*Shereeat*) derived from it, cases involving these issues all go before the Cadi, who is a graduate of the University of Fez or elsewhere, and is learned in the law. An appeal lies from both these courts to the sovereign who is both Sultan and Caliph. Attached to the Sultan's court is an officer known as Judge of Judges (*Cadi-a-Cadaat*), but he appears to exercise ministerial rather than judicial powers, although he sometimes plays the same part as the Sheikh ul Islam at Constantinople in giving a *fetwah* or opinion in answer to a judicial interrogatory modelled on the familiar form of the civil law. This opinion may also be obtained of the doctors learned in the law attached to the mosques. But there is small trace in Morocco of the vast Byzantine modification of primitive Arab administration and judicial practice so constant and apparent at Baghdad and Broussa, Cairo and Constantinople. Such as there is appears in the vast stores of legal commentaries and not in the daily administration of justice or government. In administering both, the Sultanas Caliph still sits in public, hears, and decides for all comers. It is a common thing for a suitor to go for justice from Cadi to Kaid, and the superior jurisdiction really turns on the personal weight of one or the other. Loose as this is, as I saw it in operation, I could feel how slight were the causes which might turn to one side or the other those streams of jurisdiction for which the luckless student is expected to find a coherent theory. The judicial office to us is a distinct differenced power, but in ruder times it grows on every tree which rises above its fellows. In Tangier, the large colony of Riff mountaineers who come for work, sometimes remaining, sometimes returning, settle all their disputes before their own Reis or head, a chief whose jurisdiction may or may not prove permanent, according to circumstances. The Jewish communities every-

where carry their disputes, civil and criminal, before the Rabbi, and for them the law of Moses still decides inheritance. At one of the village fairs which are held on green hill-sides, to-day tenanted by hundreds, thick with booths and busy with barter, to-morrow an open desert, I saw what I certainly never expected to see in the flesh, the court of *pied poudre* in full operation. Mrs. Williams had left me to go with a servant to shop in the strange concourse of men and women. A dispute sprang up over the ownership of a mat she was purchasing, the servant announced he appealed to the Sheikh of the market, and my first notice was to see Mrs. Williams and the servant, a vociferous booth-helper, two or three guards with long guns, and a long queue of spectators stream up to the rug on which the white-haired Sheikh was sitting, holding court. With infinite Oriental gesture and outcry the case was heard, witnesses were sent for, questions asked which showed plainly enough that a justice rude but fair and painstaking was administered by the old man, and at length Mrs. Williams triumphantly bore off the mat.

Criminal jurisdiction is complicated by the survival in full force of the right of asylum which attaches to countless shrines. The great mosque of Idrisi in Fez stands where the home of the founder stood, and its *haram* or sacred close includes the old garden, a large space about. This is full of shops and houses, in which live and trade criminals, mostly murderers, who have fled here for safety to a mercantile community in which crime is the passport to membership, a region far too holy to be polluted by the step of the infidel Christian. But in most of the shrines asylum is temporary, and after a given time a man can be starved out by withholding food. It would be impossible, on this and on many other subjects, in Morocco to-day to lay down, after long inquiry, any of those broad assertions which are so often unhesitatingly made on some land of equal extent in the past upon the strength of a phrase in a chronicle, a reference in a charter or an utterance in a law, unknown for a generation away from the king's presence. The right of asylum

shades from complete immunity, through the opportunity for escape or ransom from the blood-avenger, to more settled surroundings in which it simply protects the criminal from private vengeance until an orderly arrest can be made. These varying conditions exist in places not a day's journey apart. The mere fact that a saint's tomb or mosque is larger and more defensible from size and structure, aside from its sanctity, is plainly the cause which gathers to it a village, a market-place, and all forms of trade and association which seek shelter. The enormous advantage which this gives ecclesiastical authority in the early insecure stages of society can scarcely be estimated until it is seen that common-sense has quite as much as superstition to do in creating ecclesiastical influence and jurisdiction.

It is in the readiness with which any sign of shelter attracts those in perpetual risk and apprehension, that the connecting cause may be found of that curious jumble which is grouped in Blackstone under royal prerogative. In Morocco I found ferries, ports, fisheries, gates, bridges, roads, all under the Sultan's jurisdiction, even when the land on either side of way or river was "Sherif," or under semi-independent local rule. But as I watched I saw that these were all works and privileges in which a man must leave home, neighbor, or village as he does not in tilling his field or tending shop or herd. In short, wherever some outer stronger power was needed for the peaceful discharge of work, there the king's protection was called in, grew, flourished, and finally hardened into immemorial prerogative, so that to-day the solitary wars waged by the sovereign States of Virginia and Maryland are over the oyster-beds, which fell from this cause within the purview of prerogative.

This loose civil administration is accompanied by a military organization, still in the stages which we associate rather with our studies than our times. The provinces of Morocco, doubtless the result of some conquest now forgotten, are divided into *Naïb*, or tax-paying, and *Mukhzen* or exchequer. This is the popular subdivision. Technically I believe, for in these matters it is most difficult to obtain



exact definitions, so fluid are all distinctions and institutions—the entire realm is considered as Mukhzen or exchequer, and the provinces or tribes are divided into Naïb and Gaish (نايش)<sup>1</sup>. The Naïb tracts or tribes pay the familiar tenth or Asher of Mohammedan and indeed of all Oriental conquest, but they do not pay the Kharaj or tax of military service. Their levies of troops are tribal, led by their own chiefs and only under the general control and command of the central authority. The Gaish tribes and territory are liable to both the tithe and military service, both the Asher and Kharaj and their levies of troops are reorganized and officered at the seat of government. It is the perpetual effort of the central authority to efface this distinction, and I found that at Tetuan the claim to be “Naïb” was as firmly made as it was vigorously denied at Fez. The resemblance of all this to the *pays d’élection* and the *pays d’état* of French history, whose distinctions lasted to 1789, will occur to every one, and I put the old gray-headed governor of Tetuan to the same perplexity in which I might have put the ruler installed by Louis XI in some *pays d’état* which he was expected to rob of its privileges, by asking him in my early ignorance whether Tetuan were “Naïb.” I felt, rather than saw, that those about were watching for his answer as he slowly drew his hand over his beard and answered: “Those who live here, call it ‘Naïb.’”

In the territory under the control of the central authority, all the land out of the cities is held under military tenure. This is in no sense feudal, although the possessions of some of the powerful lords approximate to this; but even these are not feudal in the legal sense of the term. They are, if I may say so, mechanically and not

<sup>1</sup> I was assured by a well-read officer of the local administration at Tangier, that the Riff (which does not mean all Riffs), Sherarda, Looda, and Bokhari tribes were Gaish, and the Khlout, Geballi, Ahsen, and Mesmouda were Naïb. This division indicates that the present government, like the first organized in Morocco, rests on Berber tribes, and is only led by Arabs; but analysis of this phase would take me too far, and I only record this list because it is only one of many matters on which I could get no light whatever save by personal inquiry.

theoretically feudal. But the great mass of the agricultural land is held under the obligation of giving three months of military service in the year by its male owner. In default of male heirs the land goes to male kin, and in default of these it reverts to the crown, which holds great tracts of fertile land ready for all comers on the pledge of military service. This militia, which generally, not always, serves mounted, proved splendid fighting material in the Spanish war. Its members serve without pay, provide their own arms, and look with a profound contempt on the small, paid standing army which the present Sultan has gathered by a rude conscription in the city. My guard, richly paid, horse and all at a dollar a day, was, if you please, the "companion of the Sultan." The *Asker*, or soldiers in the new-fangled army, he explained to me, were the servants of the Sultan, paid wages, an inferior sort of thing altogether. Doubtless this social contempt played its part in embittering the conflict between these two forms of national defence in contests we are apt to rest as students altogether on political and fiscal differences. Even a descendant of the Arab half-breed Soudanli blacks, who were brought as slaves to Mequinez, felt himself above the *Asker*,—for he forsooth belonged to the king's household. An army based on land tenure is, as we all know, certain to yield to a paid disciplined force, however despised; but it was impossible to come in contact with men enjoying this personal privilege without seeing that in its opportunities for contact, combination, and organization, it gave the precise training and conditions which established a rude check even on an Oriental despotism. It is not, I felt, as I saw these early conditions still surviving, that standing armies directly destroy liberty, but they destroy the attendant circumstances and training which furnish freemen the chance for common action. It is impossible to compare Morocco with Eastern states in which pure military tenure has disappeared without seeing how much the courage and personal independence of the race have benefited by it. No one familiar with the East can travel in Morocco without feeling that the average of

personal prowess is far higher than elsewhere about the Mediterranean, save among the Kurds, whose mountains have given the only Oriental infantry which fight in line. This was equally true of Hannibal's forces. No military student can follow the splendid series of battles which carried him in that long curving march, which should have ended at Cannæ and did end in Capua, without seeing that he alone of Rome's Oriental antagonists had an infantry which could fight in line. He had cavalry, but he used it as all great commanders have, to mask his advance or to turn retreat into rout. Seeing the splendid military material still in Morocco, and the still finer fighting force among the Riff mountaineers, I felt that perhaps these survivals of ancient valor explained the puzzle as to where Hannibal got his infantry. Possibly, also, I venture the suggestion that that enigma in history, the sudden overrunning of Spain by the Arab, which bursts on us without the preliminary inroads of a century into Syria and Persia, was really to be explained by the Arab invasion only directing and inspiring the Moorish tribes, which for over five centuries before had been making inroads into Spain and ravaging Baetica.

But it would be a great mistake to conclude, because primitive institutions are in a state of flux, that subtle distinctions cannot grow among them. This simple people, whose loose judicial, civil, and military organization I despair of clearly conveying, have in the cities an elaborate and complicated land tenure. The land in cities is held in a family fee in which a child acquires rights upon birth which cannot be diverted by a simple sale. In addition, the mosques hold realty, houses, and, in general, markets, which are let on a rental which in many, not all, places, has assumed the character of a ground-rent, the mosque neither raising the rent nor making repairs, and recognizing any written bill of sale conveying occupancy. Ordinary conveyances in fee are said to be accompanied by the delivery of the "key," but the "key" of the mosque property is looked upon as in the mosque, and I was told that an attempt by the tenant to convey the fee, or to sell by a

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deed naming the "key," would void the lease. In the coast cities, where property has risen, the ownership of these ground-rents is coming to be a lucrative source of income. Whether the mosque can advance these rents is a point much in dispute, the written law giving the right and usage withholding it. The government has in addition large landed property in the cities whose revenue is subject to the same question, and which is sometimes rented to a tenant on conditional improvement. Rents of both mosque and government land for a long term of years are not unknown, but are less frequent than an indefinite tenure, the primitive condition of tenancy. Rents of ecclesiastical property are often payable on the day of the tutelary saint or Sidi. The order of Aissowah, the most powerful and best known in Morocco, for instance, make all their rents payable at the great feast of the Sidi Aissa, yearly held in Mequinez at his tomb, and these rents, after being gathered by the local chapters of the order, are accounted for at its central seat, and it is the popular impression, which may or may not be universally accurate, that leases of property held by the order in almost every city in the empire are valid only as approved by the Sheikh at Mequinez. The realty tenures of the empire shade imperceptibly from land open to cultivation by any one who will fence it and assume its military tenure, to the same land when it has passed in an enclosed condition through three generations, when it can be alienated and a title given—still burdened by military service. This land may go through another change when it becomes one of the houses, vineyards, or olive-yards of a village, held on a written deed and gradually ceasing to be burdened by service, particularly if near a walled town. The highway in this case is still the Sultan's; not on our theory as private property charged with a public use, but as public property retaining its original character. In a case which involved an alleged encroachment on a public road, I had the good fortune to witness an inquest of metes and bounds, two old men of the vicinage being called in to testify upon the spot, and their testimony being reduced to a formal finding by

the notaries in the presence of a representative of the guardian of crown property in Tangier. In the absence of surveys and measures, it is scarcely necessary to say that the premises are designated by a familiar name and bounded by surrounding properties and landmarks, natural or artificial.

In no case which I could discover in my brief stay was there any survival of communal village ownership, but I am not to be understood as rashly asserting that it does not exist because my constant inquiry did not discover it. Even in the villages I was assured houses and gardens were held by written deeds. There was, I may add, every sign that this absence of communal ownership in the presence of great tracts of waste lands indicates that the community once enjoyed a higher and more complicated tenure and civilization than now exists, which is probably historically true. This is borne out by a most artificial system of entail in the cities, and particularly in Fez. Lands may be left by deed to heirs of the body begotten, with reversion in default of heirs to the mosque. Such property is registered in the "great book" at the mosque, the Kairouyn Mosque being usually selected at Fez for this purpose, and in the future no sale or mortgage is possible, the title vesting in the mosque and use in the succession of heirs. This constitutes, as will be seen, an ingenious and perpetual entail, and would scarcely have been expected to survive from more cultivated times in a community so rude. In addition to a general military tenure—*tenendum* being with its limits far from obsolete as a word of possession in Morocco—lands are sometimes charged with special services. A thief-infested pass near Tangier is watched by two villages planted there to discharge their military service by keeping the king's highway. I had the privilege, and I lost no opportunity to share in these survivals, to pay a rent-charge on the garden I occupied in Fez to support the sacred trumpet music in a neighboring mosque. A water-rate is paid in most cities supplied with conduits, and this is regulated by the size of the pipe supplying the water. In a country where measurements are rude and a miner's inch is unknown, this difficulty

is met—in Tetuan at least—by charging realty with a specified rent for a pipe of the size of a coin of a given denomination and date; a simple measure always accessible. The mortgage system is the one familiar in Mohammedan law and borrowed from the civil law. It is hampered in Morocco, however, by the local usage that no Jew can buy in at a foreclosure property in the Moslem quarter, and the reverse, a provision which very considerably loosens the grip and raises the rate of the Jewish money-lender on Moslem realty.

I mention these details less because of their special value than because they united to show me, and I trust may be of like service to others, that in the study of the past it is almost equally dangerous to draw hard and fast deductions from isolated cases, transferring to other times our own experience of coherent organization, or to assume that in rude times, by survival or discovery, highly artificial methods and laws may exist little in consonance with the life about. In this, as in all else, caution is the first requisite in deduction.



THE LITERATURE OF WITCHCRAFT.



## THE LITERATURE OF WITCHCRAFT.

By PROF. GEORGE L. BURR, Cornell University.

The literature of witchcraft is not the literature of magic. Magic is world-wide. Wherever, from the first, men have found themselves face to face with the awful powers of nature and of fate which shut in their little lives, some have disdained either to bow to them in reverent submission or to seek by bribes and wheedling to win them to their side. They have tried to outwit mystery with speculation, and to outmatch force with cunning. With spell and incantation they have dared to face the grim demons of storm and fire and flood, to bid begone the lurking fiends of disease, to dip into the dread secret of the future, to call back from the shadows the loved figures of the dead, to make the gods themselves their servants. And if, at last, they have been fain to own to themselves that their lore is, after all, but vanity and their powers a delusion, they have meanwhile found in the eager credulity of their fellows, to whom they no longer dare to confess their impotence, a treasure scarcely less tempting than the favor of the gods. Over against what they deemed the hocus-pocus of worship they have set up the hocus-pocus of magic; and, as the prophet is followed by the priest, the magician is followed by the sorcerer. Under the peaceful stars of Akkadian Chaldæa, centuries before Terah wandered westward with his son, or in the tornado-torn jungles of the last-found South Sea island, the impulse and its outcome have been ever the same.

Compared with the potent share of magic in human history, its literature is indeed but scant. Its choicest secrets have always gone by word of mouth. Yet it is a literature

of all times and lands. From the clay volumes of Assyrian kings and the papyrus rolls of Egypt to the latest utterance of the spirits through Mr. Slade or of the mystic sages of the Orient through Mr. Sinnett, it is as perennial as human folly itself. Its faith may be feigned, its miracles sham; but magic itself is actual and universal.

But witchcraft never was. It was but a shadow, a nightmare: the nightmare of a religion, the shadow of a dogma. Less than five centuries saw its birth, its vigor, its decay. And this birth, this vigor, this decay, were—to a degree perhaps else unknown in history—caused by and mirrored in a literature. Of that literature it has during the last decade been mine, as librarian of the President White Library at Cornell University, to aid in building up a collection. In the last few months I have had in hand the making ready of its catalogue for the press. My task is by no means finished, and I have much to learn; but it has seemed to me that even such a hurried survey of the literature of witchcraft as I may presume to attempt may not be without interest to the American Historical Association. And this the more, since no adequate bibliography of it has ever yet been published, and no historian has thoroughly known and exploited it.

The literature of witchcraft, indeed, if under the name be included all the books which touch upon that dark subject, is something enormous. For at least four centuries no comprehensive work on theology, on philosophy, on history, on law, on medicine, on natural science, could wholly ignore it; and to lighter literature it afforded the most telling illustrations for the pulpit, the most absorbing gossip for the news-letter, the most edifying tales for the fireside. But the works devoted wholly or mainly to witchcraft are much fewer. Roundly and rudely estimated, this monographic literature includes perhaps a thousand or fifteen hundred titles.<sup>1</sup>

<sup>1</sup> I need not say that the President White Library does not possess them all; its lacunæ are many, and not unimportant. It has, however, the largest collection, private or public, with which I am acquainted. My estimate is a guess, based partly upon it, partly upon the "*Bibliotheca magica*" of Grässe, partly upon my notes as to the gaps in each; but it is hard to discriminate between books treating mainly of witchcraft and those treating only largely or ostensibly of it.

The earliest of the books on witchcraft were written in the fourteenth and fifteenth centuries. Their writers were Dominicans of the Inquisition. Not that Brother Nicolas Eymeric or Brother Nicolas Jaquier or Brother John Vineti or Brother Jerome Visconti knew that he was writing on a new theme. On the contrary, they wrote to prove that this witchcraft whereof they spoke was as old as mankind. And they cited not only Thomas Aquinas and Vincent of Beauvais, but Isidore and Gregory and Cassian and Augustine, and, above all, the Bible,—nay, even Josephus and the ancient poets, Horace and Virgil and Ovid. Wherein, then, was it really new, and how did they come to write on it at all? Bear with me while I try very briefly to answer.

Magic, in truth, the Christian Church had always known. Even the ancient faiths of Greece and Rome had, like all faiths, fought magic sternly; and, like all faiths, had counted magic much that was not so. But their polytheistic tolerance had reckoned it more a crime than a sin, and had not stigmatized as magical other faiths, save when, as in the case of Christianity, their own exclusiveness seemed to stamp their votaries as foes to the rest of mankind. Less indifferent was Christianity itself. Whatever the conceptions of her founder and of his immediate disciples, it was inevitable that, from the associations of the words in which they must express themselves, from the other preconceptions of the taught, from the influence of the Jewish scriptures, from the daily contact with Hebrew or Greek or Roman neighbors, there should early creep into the Church a touch of the superstition about her. She had inherited, indeed, the monotheism of the Jews. But, at the rise of Christianity, the day was long past when the stern logic of that monotheism saw in Jehovah the sole supernatural power, and in other worships only a fruitless idolatry. From the Persian captivity the Jews had brought back an obstinate belief in a horde of minor intelligences—the angels and demons of the New Testament period; and their teachers, seeking to justify this by one or two obscure passages in their sacred books, had

built up out of them a complete science of demonology.<sup>1</sup> To the ranks of the demons the early Christians seem at once to have assigned the deities of their heathen neighbors.<sup>2</sup> And the consciences of their Gentile converts, who found it far easier to believe the new God supreme than the old gods powerless, took most kindly to this solution. But, if the gods were devils, their worship was not mere idolatry—it was magic; and the two terms became for the Christian interchangeable.

Still stranger and darker grew the conception of magic under the influence of another Christian idea—the new idea that religion and ethics are one. Henceforth not only is there but one true God, there is but one good God. All others are fiends, hating men because God loves them, and winning their trust only to cheat and ruin them. He who willingly becomes their accomplice or their victim is utterly evil—an enemy to his kind, to be visited by the Church

<sup>1</sup> Notably out of the poetic opening verses of the sixth chapter of Genesis, which always remained the proof-passage for the demonologic system of the Church. On it had been based that mystical "book of Enoch," which exercised so striking an influence upon Jewish thought during the centuries just before and just after the Christian era, and indeed upon the writers of the New Testament themselves (Jude, for example, cites it largely and by name), and which was treated by the early Christians as wholly canonical. Hence came the legend of the fall of the angels, so familiar to us through Milton, and a commonplace in the older day. Of even more lasting influence was the demonologic romance of Tobias, or Tobit, which is now classed by Protestants as apocryphal, but which was cited by the earliest Christian writers with the same freedom as any part of the Old Testament, and still retains its place in the Catholic Bible. No book was so largely quoted by the later Christian writers on diabolism and witchcraft. The whole theory of exorcism indeed is mainly based on it; and, still more, the horrible belief in *incubi*. Of importance also (besides all that could be found in the books of our canon) were the demonologic passages of the apocryphal "Wisdom of Solomon" and "Ecclesiasticus." Tertullian cites the latter, like any other book of Scripture, with the solemn "as it is written" (*sicut scriptum est*). See Diestel, "Geschichte des Alten Testaments in der christlichen Kirche"; Reuss, "Geschichte des Alten Testaments"; and Emanuel Deutsch, "The Talmud" (in his "Literary remains").

<sup>2</sup> This impulse must have been powerfully aided by the current translation of a familiar passage in the Psalms. Where we read (Ps. xcvi, 5): "All the gods of the nations are idols," the early Church read: "All the gods of the nations are devils." The passage is constantly cited by the Fathers in this sense. Even Wiclif translates: "Alle the goddis of hethene men ben feendis [fiends]."



with her severest penances, by the state with death itself. It matters no longer with what spirit one seeks the aid of the gods, or for what ends: all but Christian worship is devil-worship,—magic,—mortal sin.

Here were indeed the germs of the later idea of witchcraft. Yet only the germs; for there was much to stay their growth. Though the world swarmed with demons, though the majority of mankind were devoted to their service, the Christian had little or nothing to fear from them.<sup>1</sup> A prayer, an exorcism, the sign of the cross, the mere name of Christ, could put legions of them to instant flight. It was the Christian's glory to baffle and set them at naught. Moreover, the whole theory was aimed at paganism, and paganism was passing away. Even the inundation of Christendom by the Germanic nations could not long retard its disappearance. Their host of deities, great and small—Asa and Jotun and troll and nix and kobold—swelled for a moment almost to bursting the ranks of the devils. But these, too, soon fell back into the ghostly twilight. Here and there some canny old mother might still gather by stealth the mystic herbs with which she trenched so vexatiously upon the monkish trade of healing,—might still haunt sacred spring or tree or rock, muttering the meaningless formulas of a forgotten faith. But such, though scholars were long prone to count them so, were not the witches of the later day. The Church grew wisely less stern toward them, rather than more so. As the spirit of Christianity took a more exclusive hold upon the minds of men, the grandeur of the monotheistic idea once more asserted itself. Resort to the old heathen rites was magic indeed; but it was magical superstition. Its marvels were not real marvels. Only God had power over nature. In this, though with much wavering and self-contradiction, the teachers of western Christendom in the ninth, the tenth, and the eleventh centuries

<sup>1</sup> What could be more vivid than the story of the old hermit who prayed God that he might see the demons, and would not be denied; "and God opened his eyes, and he saw them, for just like bees do they surround man, grating their teeth over him."—"Verba Seniorum," lib. vi., libel. i., c. 11 ("Vite Patrum," ii.).

agree<sup>1</sup>; and the earliest codes of the crystallizing Canon Law, from Regino of Prüm to Gratian, punish as superstition alike the resort to the aid of demons and the belief that such aid can be given. "Let it be publicly announced to all," ran the famous canon *Episcopi*, which formed the nucleus of the Church's teaching on this point, "that whoso believeth such fables [as that women may ride through the air] and things like this, has lost the faith; and whoso has not faith in God is none of his, but is his in whom he believes, to wit, the Devil's. Whoever, therefore, believes it to be possible that any creature can be changed into a worse or a better, or transformed into any other shape or likeness, except by the Creator himself, who made all things and by whom all things were made, is beyond doubt an infidel and worse than a pagan."<sup>2</sup> Under such handling the hold of the older faiths upon the popular imagination had, by the

<sup>1</sup> Only Archbishop Agobard, of Lyons (779-c.841), a man in many ways before his time, went so far as to write a book—what we should call a pamphlet—upon the absurdity of the popular superstitions: his "*Liber contra insulsam vulgi opinionem de grandine et tonitruis*." The essay "*De magicis artibus*" (perhaps the first Christian monograph on the subject) by his learned contemporary and colleague, Archbishop Hrabanus Maurus, of Mainz, is far more credulous, and, like most of that great teacher's work, mainly a compilation. Not forgotten by him are the Scripture texts against witchcraft, beginning with the terrible "Thou shalt not suffer a witch to live." He treats the same theme in similar fashion in his encyclopædic "*De universo*" and in his "*Penitentialia*." It was later in the same century that another great Frankish archbishop, Hincmar of Rheims, found himself brought face to face with the problem of magic, in his legal response on the divorce of King Lothaire ("*De divortio Lotharii regis et Tetbergæ reginæ*"), three of the thirty questions asked him involving it. He discussed the subject at much length, and, though credulously enough, in the main sensibly.

<sup>2</sup> The source of the canon is, indeed, now a riddle. Its ascription to the synod of Ancyra, which the Middle Age never questioned, is now known to be a mere blunder. But, from its first appearance, in the collection of Regino at the close of the ninth century, it became the recognized dictum of the Canon Law upon this subject, and remained unimpeached, even by those who devoted chapters to explaining it away, until after the Reformation. It surely was no accident that it came to light at the end of the same century in which Agobard wrote. Bishop Burchard, of Worms (d. 1025), who followed Regino as a collector of ecclesiastical law, and gave a whole book of his "*Decreta*" to decisions "*De incantatoribus et auguribus*," sets the canon *Episcopi* at its head. But this prominence in order it lost in the later compositions.

close of the twelfth century, well nigh passed away. The magic the Church had so long fought was virtually dead.

But the wording of the canon *Episcopi* itself suggests that a new cloud was already fast overspreading the horizon of Christianity—the fear, not of devils, but of the Devil. By a tendency natural to monotheism, the intenser the conception of the oneness and the goodness of God, the stronger the impulse to conceive of that which is opposed to him and to his purposes as also one and as absolutely evil. Even the earliest of the Christians seem to have understood their master to speak of such a principle as of a personal being. And, as the westward-moving faith waxed in literalness and in sternness,—as, beneath the flood of Roman ideas and ideals, the figure of God grew more majestic and imperious,—his awful shadow loomed ever more awful in the darkening background. The rise of asceticism lent a finishing touch, and metaphysics became mythology. To the tortured brain and sense of the hermit-monk the Devil was the most real being in the universe—his personal antagonist at every turn, seen and felt and grappled with. And no Christian doubted. Athanasius, the father of orthodoxy, himself gave to the world, in his life of Antony, a household book of diabolism—the “Robinson Crusoe” of the Middle Ages, with Satan (an odd man-Friday) its most vivid figure.<sup>1</sup> And Augustine, the great theologian of Latin Christianity—a Manichæan in spite of himself—in his “City of God,” that first Christian philosophy of history, which lorded the field for a thousand years (if, indeed, it does not lord it still), raised him to colleagueship with God himself by setting over against the *civitas Dei*, the kingdom of Heaven, a

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<sup>1</sup> It is true that the long discourse, put into Antony's mouth (c. 15-20), on the power and wiles of the Devil and the way to resist him, which may almost be called the first Christian monograph on diabolism, may possibly be an interpolation; but it breathes the very spirit of the Fathers, and the whole narrative is full of the Devil's doings. The popularity of the book throughout the Christian world is attested by what Augustine tells us in his “Confessions,” and the part there ascribed to it in his own conversion must have tended to increase its influence. What a favorite its story was with the sculptors and painters of the later Middle Ages we all know.

*civitas Diaboli*, the kingdom of this world, whose prince was Satan. Christianity grew ever more a dualism.<sup>1</sup>

His place in theology thus made sure, the literature of the Devil seems to have taken a long pause.<sup>2</sup> In the Lives of the Saints he still played a large and favorite part—the villain of the plot in these lesser comedies, as in the grand historical drama of the Gospels.<sup>3</sup> But it was probably not until the ninth century that there began to find their way into the West certain Byzantine traditions which seemed to throw a fresh light upon the methods of his dealing with men: legends of written compacts through which men had won the aid of Satan in this world by making over to him their souls for the next. Versified and dramatized by bishop and nun, these legends became widely popular and stirred to a fever European curiosity.<sup>4</sup> And when, a little later, the Crusades threw open wide the door to the fables of the East, and kindled that love of anecdote which made

<sup>1</sup> True, Augustine taught, and the Church after him, that Satan could do nothing save by the tacit consent of God; but the limitation was scarcely more than nominal, since against sinners he was believed to be given free hand, and only the immediate and incessant protection of the Church could ensure safety. The carnal mind was powerless to recognize him: did not the Scripture itself say that he could appear as an angel of light? Nay, he often took the form of Christ himself, as more than one hermit had testified.

<sup>2</sup> Chrysostom's monograph, "*De imbecillitate Diaboli*," is too metaphysical to be reckoned here at all, as likewise is Anselm's "*Dialogus de casu Diaboli*" of a half-dozen centuries later.

<sup>3</sup> For illustration of this, one has but to open the "*Vitae Patrum*" at random. Of the "*Collationes*" of Cassian, a book of the greatest influence throughout the Middle Ages, especially in the monasteries, "*Collatio VII.*," "*quae est prima abbatis Sereni*," and "*Collatio VIII.*," "*quae est secunda abbatis Sereni*," deal mainly with diabolism and are full of anecdote.

<sup>4</sup> Notably, of course, the famous one of Theophilus, ostensibly written by one Eutychianus in the sixth century, but known to the West through a Latin version made by a Naples deacon named Paulus, probably toward the close of the ninth century. (It may be found, with the metrical paraphrase ascribed to Bishop Marbod, in the Bollandist "*Acta Sanctorum*" for 4th February. Better known in our day, though not in hers, is its dramatization by the nun Hroswitha—one of many.) Another, scarcely less popular in the Middle Ages, though strangely overlooked by later writers, was the tale (first told in the "*Life of Basil*" ascribed apocryphally to his contemporary, Bishop Amphilocheus of Iconium) of the senator's valet who fell in love with his master's daughter, won her by signing away his soul to the Devil, and was saved only through the aid

every friar a newsmonger and every preacher a story-teller, there was scarce another domain in which the monkish imagination proved so fertile as in that of diabolism. Stephen of Bourbon gave the subject a section,<sup>1</sup> Caesarius of Heisterbach a whole book,<sup>2</sup> Thomas of Cantimpré dwelt on it in his latest and longest chapters,<sup>3</sup> the Abbot Richalmus found it enough for a monograph.<sup>4</sup> Hardly less prolific in such stories than the moralizers were the gossiping chroniclers.<sup>5</sup> And the encyclopedists, like Vincent of Beauvais, whatever else they might fail to glean, overlooked no interference of the Devil in the affairs of men.<sup>6</sup>

It was, perhaps, through the channel of the Crusades that there became known to Western theologians certain abstruser speculations of Byzantine thinkers: a treatise "On flying demons of the night,"<sup>7</sup> which gained much vogue from its ascription to the formulator of Eastern orthodoxy, John of Damascus, and a dialogue "On the doings of demons,"<sup>8</sup> by

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of St. Basil, who forced the fiend to surrender the contract. I find the story (it is a long one) first told in the West by Hincmar of Rheims (d. 882) in his response "De divortio Lotharii," who credits it to Amphilochius. Its influence in the Occident would seem, therefore, to be of about the same age as that of the Theophilus legend, which, in several respects, is less like the later witch-stories. After Hincmar the anecdote appears often. Of modern writers on witchcraft, Roskoff alone mentions it, on the basis of a vague allusion of Schwager's; and Schwager had evidently sought for it in vain, misunderstanding it to be in Basil's "Dialogues." Amphilochius' "Vita Basilii" may be found in the "Vitae Patrum," and in the Bollandist "Acta Sanctorum" (June, vol. iii.).

<sup>1</sup> In his "De septem donis," tit. vii., cap. 34, sp. 5.

<sup>2</sup> In his "Dialogus miraculorum," distinctio v.

<sup>3</sup> In his "Bonum universale de apibus," cap. 54-56. The first of these chapters is "De diabolo transfigurantis se in angelum lucis"; the last, "De demonibus aërem perturbantibus." Thomas was a Dominican, and wrote, as he himself here tells us, in 1258.

<sup>4</sup> His "Liber revelationum de insidiis et versutiis daemonum adversus homines" (in Pez, "Thesaurus," I., ii.).

<sup>5</sup> E.g., Alberic of Trois-Fontaines, or John of Winterthur (Vitoduranus).

<sup>6</sup> Of Vincent it is especially the "Speculum Historiale" that thus abounds. To this great compilation the earliest writers on witchcraft owed their precedents almost as largely as they owed their arguments to Thomas Aquinas.

<sup>7</sup> "De draconibus" is the usual, but misleading, form of its Latin title.

<sup>8</sup> "De operatione daemonum" it is entitled in the Latin translation of Gaulmin (1615) and in the edition of the Greek original by Boissonade (1837).



Michael Psellus, the most prolific author of the mediæval Greek Church. Both of these discussed in minute and unblushing detail the relations of devils with mortals.

They came opportunely. The great structure of the scholastic philosophy, which, resting on the sure basis of Scripture and compassing all knowledge, was to put an end forever to the restless speculations of the human mind, was just in the making. Already the dualism of Augustine had been made its corner-stone. And now, resting perhaps on these Greek suggestions, as on the earlier Byzantine vagaries of the pseudo-Dionysius, with that relentless logic which made their system (possibly excepting the harder Protestant scholasticism of Calvin) the baldest rationalism the world has known, its builders wrought out, in this atmosphere of the thirteenth century, and buttressed on every side with text and canon, the scheme of diabolism of which the whole literature of witchcraft is but a broken reflection. Into the details of that scheme I need not go. The Devil and his demons become in all points the conscious parody of God and his angels.<sup>1</sup>

As fallen angels, they still have power over storm, and lightning, and pestilence, and "whatsoever"—to use the schoolmen's phrase—"has local motion alone." And just as God has his human servants, his church, on earth, so also the Devil has his—men and women sworn to his service and true to his bidding. To win such followers he can appear to men in any form he pleases, can deceive them, seduce them, enter into compact with them, initiate them into his worship, make them his allies for the ruin of their fellows. Now, it is these human allies and servants of Satan, thus postulated into existence by the brain of a monkish logician,<sup>2</sup> whom history knows as "witches."

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<sup>1</sup> "*Diabolus simia Dei est*," is the startling formula in which the Middle Age embodied this doctrine and betrayed its source.

<sup>2</sup> For, strictly speaking, it is only Thomas of Aquino that this theory can be attributed; but Thomas Aquinas was *par excellence* the creator of the scholastic theology. It is he who was sainted for his wisdom, who has been raised by the Popes to the rank of a fifth Teacher of the Church (*Doctor ecclesiae*), the only successor of Athanasius and Ambrose and Jerome and Augustine. How



At first, indeed, the dictum of the schoolmen seemed little to affect the current of popular thought. The Devil played only an ever merrier part in the travel-quickenened fancy of Europe; and one can almost catch the twinkle in the eye of the monkish story-tellers who pretend to shudder at his pranks.

But the Church was in earnest. Scholasticism, alas, had not put an end to thought. The minds it had trained to think kept on thinking; and, with them, others who would not even start from the safe premises of the Church. What, then, should a good mother-church do who had expounded the universe, yet still found herself vexed by questioners more numerous and troublesome than before? What if they contaminate even the faithful? She preached a crusade against them, and wiped the plague-spot from her sight. But the disease only struck in. How should she inspect men's hearts? She made stated confession necessary to

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thoroughly he is alone responsible may be seen by comparing his dicta on this topic with those of his great master, Albert of Bollstädt (Albertus Magnus), who still stands fully on the ground of the canon *Episcopi*. These dicta of Thomas are scattered throughout his works, but were carefully gleaned by all the earlier writers on witchcraft, and may be found bodily in their pages; they cite him more than all other authorities together, save the Bible. Thus, in the midst of his discussion of impediments to matrimony (in his "Quodlibeta," x., questio 10, "De maleficiatis"), he bursts out: "Of witchcraft, however, be it known: that certain have said that there is no such thing, and that this [idea] proceeded from infidelity, because they would have it that there are no demons, save by the imagination of men—inasmuch, that is, as men imagined them, and, terrified by that imagining, were distressed. But the Catholic faith teaches, both that there are demons and that by their doings they can distress men." . . . ("Fides autem catholica vult: et quod daemones sint et possint eorum operationibus laedere et impedire carnalem copulam." I quote from the edition of Nuremberg, 1474.) Of the dogmas that cluster about the terrible word *incubus*,—not to be uttered without a blush or heard without a shudder,—let me not speak.

His fellow-Dominicans followed him at once, and gradually brought the Church to their side, but not without opposition. The Franciscans, especially, long stood out. Their great summist, Astexanus de Ast, writing in 1317, will go no whit beyond the canon *Episcopi*. Even Alfonso de Spina, in 1459, refused to believe in the witch-flight; and men like Samuel de Cassinis and Franciscus à Victoria carried the Franciscan protest far into the sixteenth century. But this, of course, only intensified the Dominican championship of the dogma.

salvation. But the heretics would not confess. Then, in her desperation, she hit upon that last expedient for the detection of wrong thinking: she devised the Holy Inquisition and put in its hand the torture. How supremely effective that was I need not tell you: it is not its dealing with the heretics that concerns us. But when, in the lands where the Inquisition had found entrance, heresy was at last utterly rooted out,—when the souls of the faithful were safe and the hands of the inquisitors idle,—then, as was natural, the hungry organization cast its eyes about for other victims. Had not the prince of the schoolmen, the oracle of the Dominican order, taught that there were among men other servants of the Devil, more subtle, more dangerous, than the heretics: the men and women devoted altogether to his service—the witches? Already, as early as 1257, the Inquisition had asked the Pope “whether it ought not to take cognizance of divination and sorcery.” He had refused, unless manifest heresy were involved. But, if St. Thomas is right, said the inquisitors, witchcraft itself *is* heresy. Their victims were forced to confess to a renunciation of God and an actual pact with Satan, express or tacit, and the Inquisition rapidly extended its jurisdiction in the matter. In 1320, the panic-stricken Pope, John XXII., trembling lest he himself be bewitched by his multiplying foes, begged the inquisitors, in a formal brief, to extirpate utterly the Devil-worshippers.<sup>1</sup> The Church was now fully committed. The rules for the direction of the inquisitors became ever more explicit,<sup>2</sup> *Summa* and *Confessionale* for

<sup>1</sup> A little later the same Pope issued a general bull (an *extravagans*) “contra magos magicasque superstitiones.” It may be found in Eymeric’s “Directorium inquisitorum” (pars ii., qu. 43) or in Binsfeld’s “De confessionibus maleficorum.” It is undated, but Janus (Döllinger and Huber) puts it “about 1330.”

<sup>2</sup> It was about 1350 when the inquisitors fortified themselves by taking the advice of the most eminent jurist of the day, the Italian professor Bartolo, as to the punishment to be inflicted on the witches. His opinion is still extant (in Ziletti, “Consilia selecta,” 1577, i., 8). On the strength of the words of Jesus, “If a man abide not in me [*i.e.*, said Bartolo and the inquisitors, in the Church], he is cast forth as a branch, . . . and men gather them and cast them into the fire, and they are burned;” he approved their burning alive. (See Janus, *i.e.*, Döllinger and Huber, “The Pope and the Council,” London, 1869, pp. 254, 255.)

priest and sinner ever more diffuse, as to this blackest of the sins—"treason against Heaven."

But hindrance came from a more obstinate quarter. Even though the Church were convinced, the world had yet to be reasoned with. What was, then, this new crime, of which such myriads were suddenly guilty? Even the great state trials of the Templars, in the early years of the fourteenth century, with all the stir they made throughout Europe, and with all the stress they sought to lay on the charge of witchcraft, had not left the conception clear. The thing must be explained by the inquisitors themselves. And so it happened that the beginnings of the literature of witchcraft were made by Dominicans of the Inquisition.

Clever was their argument and portentous their array of authorities. First of all, the Bible. And let the historian frankly admit that, but for what they found here, the world would never have come to their side. That strange sixth chapter of Genesis,—the terrible verdict of the Mosaic code, "Thou shalt not suffer a witch to live,"—the story of the temptation of Jesus in the wilderness, which seemed to a literal age to set a divine seal on the most startling of the witch-doctrines: had not the Devil personally appeared to Jesus?—had he not miraculously transported him through the air?—had he not shown himself the lord of the kingdoms of this world?—had he not sought to make a pact with the Christ himself by offering him all?—were it not dishonor to the Son of God to suppose that all men could resist as he had done? These passages, and a host of others which we have learned to forget, or obscure, or explain away, made the Bible, from first to last, the great corner-stone of the literature of witchcraft.<sup>1</sup> Yet this was but the inquisitor's starting-point. He knew how to press into his service poet and philosopher, the apologists of the early Church, her liturgies with their exorcisms and renunciations of the Devil, the canons of synods and councils, the laws of Christ-

<sup>1</sup> And what wonder, when even a reformer like John Wesley, late in the enlightened eighteenth century, still thought that "the giving up of witchcraft is in effect giving up the Bible"? (In his "Journal," 1768,—cited by Mr. Lecky.)

ian emperors, the great works of the Fathers and of the Schoolmen, the lives of the saints, the tales of the chroniclers, the utterances of the popes.

The earliest known to me of these inquisitorial treatises on witchcraft is from the pen of the great compiler of the code of the Inquisition, the author of the "*Directorium inquisitorium*," the Aragonese Inquisitor-General, Nicolas Eymeric. As early as 1359, only three years after entering on his duties, he produced his "*Tractatus contra daemonum invocatores*,"<sup>1</sup> to prove that witchcraft was heresy, and that its punishment belonged to the Inquisition. But the world was still hard of faith. The Inquisition in France having shown itself too active, the Parlement of Paris in 1390 assumed to the secular courts all jurisdiction in cases of witchcraft.

But, in 1431, the trial and condemnation of Jeanne d'Arc, at Rouen, by an ecclesiastical court under English

<sup>1</sup> The book, though existing in sundry MSS. (see Quétif and Échard, "*Script. Ord. Pred.*," and Antonio, "*Bibl. Script. Hispan.*"), has never been printed, and I have not seen it; but its attitude may be guessed from Eymeric's treatment of the subject in the "*Directorium*." The statement (made by Antonio and others) that he was led to write it by the denial of his jurisdiction in the case of a certain Barcelonese Jew, can hardly be true, since the "*Directorium*" (pars ii., qu. 46) puts this episode "in the time of Pope Urban V.," whose papacy began in 1362. A better explanation is suggested by Mr. Lea, when he tells us ("*The Inquisition of the Middle Ages*," ii., 175) that "the sum of Eymeric's activity during his long career is so small that it shows how little was left of heresy by this time. Occasional Fraticelli and Waldenses and renegade Jews or Saracens were all that rewarded the inquisitor, with every now and then some harmless lunatic whose extravagance unfortunately took a religious turn, or some over-subtle speculator on the intricacies of dogmatic theology."

A Paris MS. of Eymeric's book begins (according to Quétif): "*Incipit prologus in tractatum super daemonum invocatione, an scilicet daemones invocare sapiat haeresim manifeste, editum et confectum a F. Nicolas Eymerici ord. FF. Prædic.*," and bears at end its date: "*perfectus anno D[omi]ni MCCCCLIX.*" The latter may refer only to the MS.; but the book must of course be at least as old. The title of the work is elsewhere given as "*Contra adoratores et advocatores daemonum*"; and the Escorial catalogue (cited by Antonio) calls it: "*De jurisdictione Inquisitorum in et contra Christianos daemones invocantes.*" Eymeric would seem to have completed or supplemented this by another: "*De jurisdictione ecclesiae et inquisitorum contra infideles daemones invocantes*" (see Quétif and Échard), and it is perhaps the latter that was called forth by the case of the Barcelona Jew.

protection, drew the eyes of all Europe; and, though in it the charge of witchcraft had taken but a subordinate place, and had been used with an awkwardness at which the judges of the following century would have blushed, it was this charge that struck the popular mind. In 1437 Pope Eugene ventured again to urge the inquisitors everywhere to greater diligence against witchcraft; and in the same year the German Dominican, Johannes Nider, put forth, as the fifth and culminating book of his "*Formicarius*," or "*Ant-Hill*," the first popular essay on the witches.<sup>1</sup> Of their horrible depravity he heaps up anecdote upon anecdote; and it is soon clear that he has found a new and exhaustless source—the testimony of the witches themselves.

Who need longer doubt the reality of the crime when its perpetrators confess to all, and more than all, that the inquisitors have told? Torture was a new thing in procedure, as yet unknown outside the ecclesiastical courts; and two centuries of horrors must pass before men should learn that its victims may confess more than the truth.<sup>2</sup> No

<sup>1</sup> "*De maleficis et eorum deceptionibus*." This essay was early detached from the rest of the book and appended to the editions of the "*Witch-Hammer*," and it became an inseparable addition to that work. The title-page of these reprints always calls Nider an inquisitor, and the statement has also the high authority of Trithemius. His latest German biographers deny (as do Quétif and Échard) that there is any evidence of his having been one. Mr. Lea, however, still thinks that he "seems sometimes to have acted as inquisitor"; and, in any case, all his sympathies were with this work of his order. Nider (according to Quétif and Échard) kept his book in hand for several years, and its various MSS. are of different dates; but that of 1437 seems to have been its last revision.

<sup>2</sup> How powerful this argument was to the men of that time may be inferred from the words of the eminent Italian theological professor Isolani, who in 1506 published an argument ("*Libellus adversus magos*," etc.) to prove that men cannot be bewitched into taking religious vows, and who, though a Dominican, was not an inquisitor, and was by no means prone to superstition. "*Querant qui haec vana fictaque judicaverint processus totis Cristiani imperii finibus apprimè notos, quos virieruditissimi, omnium virtutum genere preclarissimi, reis narrantibus composuere. His minime assentiant, qui Demonas . . . esse nequaquam opinantur.*"

There are not wanting still good people who marvel at what they call the "agreement" in the testimony of the witches. To such may be commended the prescribed lists of interrogatories, which from more than one "Instruction



wonder that Nider's book was popular! The literature of witchcraft was fairly launched.

No rival appeared, however, till in 1452 the French inquisitor, Nicolas Jaquier,<sup>1</sup> wrote his treatise, "*De calcatione daemonum*,"<sup>2</sup> and in 1458 produced his monograph on witchcraft proper—his "*Flagellum haereticorum fascinariorum*."<sup>3</sup> Jaquier expressly tells us that his book is written because of the hindrances thrown in the way of the inquisitors by skeptics. His whole work is but one long refutation of the canon *Episcopi*; and, while drawing as largely as his predecessors from the Bible and from Thomas Aquinas, he, too, finds his most irrefutable arguments in the fresh confessions of tortured witches. In the following year—1459—the Spanish Franciscan, Alonso (or Alfonso) de Spina,<sup>4</sup> brought out his "*Fortalitium fidei*," and lent a

to Judges" are now making their way to light. And, even where these were not used, leading questions were the rule, and the victim had little more to do than answer yes or no. Only here and there in the trials do we find some poor quivering woman begging her judges to tell her what she must confess. The confession was a criterion, not of the guilt of the witch, but of the learning of her inquisitors. It is rather a marvel that there should ever be disagreement, when the victim not only had such prompters, but must herself time and again have heard just such confessions read, as the custom was, to the crowd gathered about the stake.

And if any are puzzled that the confessions should be persisted in after the torture and in the face of death (which, in countless cases, they were *not*), they should remember that persistence in confession was long a condition of that "forbearance of the Court" which suffered the prisoner to be first strangled or beheaded, instead of being burned alive. Only the Church *always* burned alive.

<sup>1</sup> Or Jaquier (Latin, *Jacquerius* or *Jacquerius*).

<sup>2</sup> *I.e.*, On the treading-under-foot of demons. (*Calcatio*, a mediæval word, means usually threshing, *i.e.*, by treading out; but Jaquier must have had in view its literal sense.) The book has never been printed, but exists in MS. (according to Quétif and Échard) at Louvain and elsewhere. A copy at St. Omer is entitled: "*De calcatione malignorum spirituum*." The book begins: "*Duo magna incommoda inter caetera incurrit genus humanum*."

<sup>3</sup> The rod (*flagellum*) was meant to scourge out of God's temple, the Church, certain "perverse dogmas and stolid assertions," to wit: that witches are victims of delusion. Jaquier tells us himself (pp. 39, 56, of the first printed ed., of 1581) the year in which he writes.

<sup>4</sup> Mr. Lea writes "Alonso," and I defer to his high authority, though I have not else met that form. As "Alphonsus à Spina" he is known to his Latin-writing contemporaries.



climax to its refutation of Jewish and Saracen errors by making its fifth and last book treat "Of the war of the demons"—"De bello daemonum."

But the diffusion of the literature of witchcraft was no longer to wait on the slow work of the copyist. The new art of printing soon availed itself of so tempting a topic. Before 1470, Mentelin, of Strasburg, turned out from his exquisite press a fine edition of the "Fortalitium fidei"; and, about 1476, Anton Sorg, of Augsburg, followed it with the "Formicarius" of Nider. Not all of their fellow-treatises were so fortunate. A "Tractatus contra daemonum invocatores," by the Carcassonne inquisitor Joannes Vineti,<sup>1</sup> got itself printed; and a lecture on the subject delivered at Paris, in 1482, by the Saragossa canon Bernard Basin,<sup>2</sup> was given to the press in the same or the following year. But the book of Jaquier had yet a century to wait; and fresh monographs by the Poitou theological professor Petrus Mamoris<sup>3</sup> and the Italian inquisitor Girolamo Visconti<sup>4</sup> must lie in

<sup>1</sup> In his book itself the name is spelled *Vineti*; but Quétif and Échard, who know of him from other sources, write *Vineti*, and the other may well be a misprint, though *Viveti* has been adopted by the few bibliographers who know of the book. The impression is undated; but Quétif and Échard ascribe it to 1483. V. was inquisitor at Carcassonne from 1450 to about 1475.

<sup>2</sup> His "Tractatus de magicis artibus ac magorum maleficiis." According to the title of an edition described by Hain, it was written by Basin in 1482 "in suis vespis," and the first dated impression is of Paris, 1483; but it is quite clear from his opening words that it was an address, on some formal occasion, before a theological faculty—doubtless at Paris, where Basin was a doctor of theology,—and there is an undated Paris impression (put first by Hain), which was very probably printed at once. Basin was a speaker of some note, for we find him in 1481 (according to Burchard's "Diarium") preaching before the cardinals at Rome.

<sup>3</sup> His "Flagellum maleficorum," written probably soon after the middle of the century (he mentions nothing later than 1453), but not printed till about 1490.

<sup>4</sup> His "Lamiarum sive strigarum opusculum," printed in 1490. Quétif and Échard, who know it only in MS., give its title as "De lamiis et strigibus ad Franciscum Sfortiam Vicecomitem," which would seem to prove it written before 1465, since Francesco Sforza died in that year. I hold in my hand a manuscript of what is perhaps the same, but is quite as possibly a different treatise by the same author. It is entitled: "Opusculum Magistri Hieronymi Vicecomitis [*i.e.*, Visconti—the inquisitor is said to have been a member of the great Milanese family of that name] ordinis *praedicatorum* in

manuscript for a decade or two, while more than one other has never been printed at all.<sup>1</sup> For there now appeared a work which made all such trifles needless: the terrible book which has been said, and perhaps truly, to have caused more suffering than any other written by human pen—the “*Malleus maleficarum*,” or “Witch-Hammer.”

The inquisitors charged with the spread of the persecution in Germany had found no easy task. Not only had they the obstinacy of the secular courts to contend with, but, still more, the jealousy of the bishops, who till now, in the Empire, had succeeded in keeping the ecclesiastical jurisdiction in their own hands. In vain, from pulpit and professor's chair, did the Dominican brotherhood promulgate the theories of Thomas Aquinas and of Eymeric. The German bishops declared that there were no witches in their territories.<sup>2</sup> In despair the baffled inquisitors of Germany, Heinrich Krämer<sup>3</sup> and Jacob Sprenger, at last turned their steps toward Rome. There, on December 5, 1484, they won from Pope Innocent VIII. the famous bull *Summis desiderantes*. Portraying in the most startling colors, and at much length, the calamities to man and beast, vineyard and

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quo probatur *Lamias esse haereticas et non laborare humore melancholico*.” It is apparently contemporary, and may be the autograph of its author, though the marginal corrections and annotations are in differing hands of the same period. It is directed mainly against the canon *Episcopi*, and shows no knowledge either of witch-bull or of “Witch-Hammer.” Date it has none. The White Library is indebted for it to Dr. Hennen, of Düsseldorf, to whom it came from the collection of the musician Tosi.

<sup>1</sup> Of these I have already mentioned the books of Eymeric and Jaquier. Mr. Lea (“The Inquisition of the Middle Ages,” iii., 533) says that when (about 1460) certain witches were arrested at Tournay, Jean Tainture, a clerk, “wrote an elaborate treatise to prove their guilt,” which still exists in MS. in the National Library at Brussels. Mr. Lecky's statement that the famous Spanish inquisitor-general Thomas of Torquemada wrote a book on witchcraft must, however, be a confusion of him with his namesake Antonio, who lived a century later. Still in MS. is also the “*Buch von allerhand verbotenen Künsten, Unglauben und Zauberey*” written about 1455, in a very different spirit—doubtless for the amusement of his ducal patrons—by the versatile Dr. Hartlieb, of Munich.

<sup>2</sup> So, at least, (according to Soldan-Heppe) replied Archbishop Johann of Trier.

<sup>3</sup> Better known by his Latin name of Institor, or Institoris.

harvest, brought by the witches, who, he is grieved to learn, swarm throughout Germany, the head of the Church enjoins all the faithful, on pain of the indignation of Almighty God and of the apostles Peter and Paul, to lend aid to the inquisitors in the extirpation of such monsters. Thus armed, the two Dominicans turned homeward; but their preparation was not yet complete. Men must be taught not only what to do, but how to do it. So Sprenger and Krämer set themselves at the compilation of a hand-book of arguments, rules, and procedure for the detection and punishment of witches which should henceforth make every man his own inquisitor. Completed in 1486, the book was probably given to the press in the same year.<sup>1</sup> As motto, it bore on its title-page the menacing sentence: "Not to believe in witchcraft is the greatest of heresies."<sup>2</sup> Edition

<sup>1</sup> The statement, made by nearly all authorities on this subject, that the "Witch-Hammer" was first printed in 1489, is a manifest error. True, its first dated edition is of that year. But Hain ("Repertorium Bibliographicum," Nos. 9238-9241) chronicles no less than four undated (and presumably earlier) editions. All of these I have examined. One alone—that to which Hain wisely gives the first place—lacks both the Cologne theological faculty's approval of May, 1487, and the commendatory letters of Maximilian of Austria, of 6 Nov., 1486, both of which appear in all other editions, and were not likely to be omitted when once obtained. The first impression can hardly, therefore, be of later date than 1486. That it is not earlier is clear from the evidence of the book itself. It begins with a commentary on the bull of 5 Dec., 1484 (the bull itself is not printed in this first edition), which must have required a little time to make. That the book was not completed in the year of its beginning may perhaps be inferred from the phrase "anno eodem quo hic liber est inchoatus," used to date a certain anecdote. That at least a part of it was written in 1486 is sure from the fact that an incident (the burning of forty-one witches in a single year by the inquisitor Cumanus) is in one place (pars I., qu. 11) said to have happened "last year," in another (pars II., qu. 1, cap. ii.)—"in the year 1485," and still again (pars III., qu. 15) "anno elapso, qui fuit 1485." 1486, then, was almost unquestionably the year of its publication. The suggestion of Stanonik ("Allgemeine Deutsche Biographie," s. v. Krämer) that it may have appeared in the same year with the bull is therefore untenable (the edition mentioned by Quétif and Échard, following Fontana, as of "Lugduni, Juntarum, 1484," was probably printed in 1584); and 1486 was, almost unquestionably, the year of its publication. The copy of the *editio princeps* examined by me is in the City Library of Trier; the White Library has what seems the second (Hain, 9239).

<sup>2</sup> "Haeresis est maxima, opera maleficarum non credere."

followed edition with striking rapidity, and with the issue of the "Witch-Hammer" began a new era in the history of witchcraft and of its literature.

It is not my purpose to discuss book by book the literature whose beginnings I have tried with some fulness to describe. The barest mention of only its epoch-making titles would more than fill the space remaining to me. Many of them are familiar to all English readers, through the classical chapter of Mr. Lecky<sup>1</sup>; and the story of their influence may be studied in more detail in the great German works of Soldan-Heppe,<sup>2</sup> of Roskoff,<sup>3</sup> and of Längin.<sup>4</sup> I can now but briefly characterize what seem to me the main epochs in its development. But let me, in passing, remark that the opponents of the persecution seem to me neither so few nor so feeble as one might infer from the pages of Mr. Lecky. Its defenders are never weary of complaining of the numbers and influence of the skeptics; and, though most found it wiser to hold their tongues, or preferred to speak out only in private, the open assaults upon the delusion are more numerous than the historians of witchcraft have known.

The "*Malleus maleficarum*" appealed to readers of every class. The question could no longer be ignored. The book's appearance began a period of controversy, which lasted till the outbreak of the Reformation distracted all attention to itself. Jurists like Ulrich Molitor,<sup>5</sup> Alciati,<sup>6</sup> and Ponzinibio,<sup>7</sup> philosophers and men of letters like Cor-

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<sup>1</sup> In his "History of the rise and influence of the spirit of rationalism in Europe," i. It is by all odds the best survey of the field in English. Admirable in its insight, though less ambitious in its scope, is also Mr. Lowell's essay on witchcraft (first published in the *North American Review*, then reprinted in the first series of his "Among my books").

<sup>2</sup> Soldan's "*Geschichte der Hexenprozesse, neu bearbeitet von Heinrich Hepp*," Stuttgart, 1880.

<sup>3</sup> "*Geschichte des Teufels*," Leipzig, 1869.

<sup>4</sup> "*Religion und Hexenprozess*," Leipzig, 1888.

<sup>5</sup> Or Molitoris (Müller's Ulrich?). In his "*De lamiis et phitonicis [pythonicis] mulieribus*," Cologne, 1489.

<sup>6</sup> In his "*Parerga juris*" (to be found in his "Opera").

<sup>7</sup> In his "*De lamiis*" (to be found in Ziletti).

nelius Agrippa<sup>1</sup> and Hans Sachs,<sup>2</sup> dared to oppose the superstition<sup>3</sup>; and a cohort of theologians like the inquisitors Bernard of Como<sup>4</sup> and Hoogstraten,<sup>5</sup> their fellow-Dominicans Dodo and Theatinus,<sup>6</sup> the historian and scholar Trithemius,<sup>7</sup> the Spanish mathematician Ciruelo,<sup>8</sup> the papal masters of the palace Prierias<sup>9</sup> and Spina,<sup>10</sup> even a half-monkish layman like the younger Pico della Mirandola,<sup>11</sup> appeared in its defence. The briefs of Leo X. and of Adrian VI., in 1521 and 1523, seemed to close the dispute in favor of the witch-hunters.

<sup>1</sup> In his "De vanitate scientiarum"; but even more boldly in his fiery defence and rescue of a witch indicted by the Dominicans at Metz in 1519.

<sup>2</sup> Notably in his "Ein wunderlich gesprech von fünff unhulden," 1531.

<sup>3</sup> Erasmus, alas, is hardly to be reckoned among them. The letter, of the year 1500, to Abbot Antonius à Bergis, in which he gives an account of a witch prosecution, and which has been too hastily cited by Soldan (and by so many on his authority) as showing his skepticism, is rather an evidence of his credulity. The "novum et inauditum portentum" at which he pretends to shudder is not the witch-trial, but the alleged crime itself. Nor is there any thing in his "Praise of Folly" that can prove him incredulous on this point. Yet, is Mr. Lecky quite right in thinking that "Erasmus was an equally firm believer in witchcraft" with Luther? Even in his letter to the Abbot he scores the meanness, the duplicity, and the vanity of the Dominican tale-bearer; if he does not share, he certainly does not censure, the hesitation of his friend the Official to believe the astounding things revealed under the torture; and the holy horror which he displays to his clerical patron has a factitious ring. Certainly he was as far from defending as from denying the inquisitorial theory; and the whole tenor of his pen toward monkish superstitions must have strengthened the courage of those who questioned this one also.

<sup>4</sup> In his "De strigiis," written about 1510.

<sup>5</sup> In his "Tractatus declarans quam graviter peccent quaerentes auxilium a maleficiis," Cologne, 1510.

<sup>6</sup> I know of these only through Quétif and Échard. Were their treatises ever printed?

<sup>7</sup> In his "Liber octo quaestionum ad Maximilianum Caesarem" (it was very probably his powerful advocacy that won the persecution the support of that prince, his pupil and friend), Oppenheim, 1515; and in his "Antipalus maleficiorum," not printed till 1555.

<sup>8</sup> In his "Opus de magica superstitione," Alcalá, 1521, better known in its later Spanish version.

<sup>9</sup> *I.e.*, Silvestro Mazolini, of Prierio. In his "De strigimagorum daemonumque mirandis," Rome, 1521.

<sup>10</sup> In his "Quaestio de strigibus," 1523; and in his "In Ponzinibium de lamiis apologia," 1525.

<sup>11</sup> In his "Strix, seu de ludificatione daemonum," Bologna, 1523.



The forty years of lull<sup>1</sup> that followed marked no decline of faith in this field. Whatever else Catholic and Protestant, Lutheran and Calvinist, might wrangle over, there remained the most edifying unanimity as to the activity of the Devil; and each party vied with the others in showing its innocence of complicity with him by hatred toward his peculiar servants, the witches. From the close of the previous century, the growing influence of the Roman law, the spread of written procedure, the substitution of public for private prosecution in criminal cases, and the introduction of torture from the ecclesiastical into the secular courts had been quietly smoothing the way for the persecution; and the written codes, which one by one embodied the new juristic attitude, gave ever fresh emphasis to witchcraft as a crime.<sup>2</sup> Quietly but steadily, as the religious fever waned and the zeal of revolution gave place to the timorous lassitude of reaction, the witchcraft panic and the horrors of the attendant persecution spread through the lands which had been torn by the struggle.

The first voice raised against it was that of the Rhenish physician Johann Weyer,<sup>3</sup> whose noble book "*De praestigiis daemonum*" saw the light in 1563. It ushered in a second era of controversy. Slowly, here and there, the burning words of Weyer stirred up a disciple, more or less ardent: Ewich<sup>4</sup> and Neuwaldt<sup>5</sup> and Witekind<sup>6</sup> and

<sup>1</sup> Not, of course, that there were in this time *no* new books on witchcraft; but they were few and unimportant.

<sup>2</sup> As a crime in itself, independently of the material injury alleged to be caused by it. Thus, notably, the "*Carolina*" (the great new criminal code of the Empire, 1532), which became a model for all Europe. The first English statute (in 1541), more conservative, took cognizance of the intent of the witch, and the "*Carolina*" required proof of actual damage before inflicting death. But the courts were not fastidious as to sort or amount.

<sup>3</sup> Or Weier, Wier (Latin, Wierus or Piscinarius). As to Weyer, his opponents, and his followers, the scholarly and admirable biography by Professor Binz ("*Doctor Johann Weyer*," Bonn, 1885), a model for others of its kind, has opened a whole new field.

<sup>4</sup> "*De sagarum natura*," Bremen, 1584.

<sup>5</sup> "*Exegesis expurgationis sagarum super aquam frigidam*," Helmstadt, 1584.

<sup>6</sup> "*Christlich Bedenken und Erinnerung von Zauberey*," Heidelberg, 1585. He was a professor at Heidelberg, but wrote under the pseudonym of "Au-

Loos<sup>1</sup> and Godelmann<sup>2</sup> and Anten<sup>3</sup> in Germany, Reginald Scot<sup>4</sup> and Gifford<sup>5</sup> and Harsnet<sup>6</sup> and Cotta<sup>7</sup> in England. But they stirred up adversaries tenfold more numerous and influential: Daneau<sup>8</sup> in Switzerland, Bodin<sup>9</sup> and Crespet<sup>10</sup>

gustin Lercheimer of Steinfeld"; and so carefully was his secret kept that it has but just been ferreted out. A critically edited reprint of his book was last year published by Professors Binz and Birlinger, of Bonn.

<sup>1</sup> "De vera et falsa magia," partially printed at Cologne, 1592. Loos's book, long supposed to have been destroyed by the Inquisition at the time of his forced recantation, I had the good fortune, in 1886, to find in MS. (apparently his own copy) on the shelves of the City Library at Trier (see the *Nation* for 11 Nov., 1886), and brought away a *fac-simile*. Since that time printed pages of it (so much as had been completed before its seizure) have been unearthed at the City Library of Cologne (see the *Centralblatt für Bibliothekswesen*, 1888, p. 455). The minutes of the trial of Loos's compatriot and fellow-martyr, Dr. Dietrich Flade, of Trier, the most eminent victim of the persecution in Germany, which had also long been thought lost, are in the President White Library.

<sup>2</sup> "De magis, veneficis et lamiis," Frankfurt a. M., 1591.

<sup>3</sup> "Γυναικόλουσις, seu mulierum lavatio, quam purgationem per aquam frigidam vocant; item vulgaris de potentia lamiarum opinio, quod utraque Deo, naturae omni juri et probatae consuetudini sit contraria. Candida, brevis et dilucida oratio," Lubeck, 1590. The book is overlooked even by Binz.

<sup>4</sup> "The discoverie of witchcraft," London, 1584. This first edition is so rare that the British Museum itself has not a perfect copy (our own collection is more fortunate); but there is now an admirable reprint (edited by Brinsley Nicholson, London, 1886). Scot is bolder and more rational than Weyer himself.

<sup>5</sup> "A discourse of the subtil practises of devilles by witches," London, 1557.

<sup>6</sup> "A dialogue concerning witches and witchcrafts," London, 1603.

<sup>7</sup> "A declaration of egregious popish impostures," London, 1603. Harsnet, who at the time of writing this was only chaplain to the Bishop of London, but who became successively Master of Pembroke Hall, Vice-Chancellor of Cambridge, Bishop of Chichester, Bishop of Norwich, and Archbishop of York, was one of the most rational and outspoken men of his time. It was in 1599, as it seems, that he first took ground against the belief in demoniacal possession, in his book against the Anglican exorcist, John Darrell, whom he virtually drove from the realm. His "Declaration of popish impostures," written against the Jesuit Edmunds, or Weston, and his exorcisms, appeared in 1603. In it Harsnet shows himself a thorough-going disciple of Reginald Scot (whom he cites), and scoffs openly at the whole body of witchcraft superstition, declaring it delusion and humbug.

<sup>8</sup> "The triall of witchcraft," London, 1616.

<sup>9</sup> "Les sorciers," 1574. In Latin, as "De veneficis," in 1575.

<sup>10</sup> "De la démonomanie des sorciers," Paris, 1580. More widely read in its Latin translation of the following year.

<sup>11</sup> "De la haine de Satan et malins esprits contre l'homme," Paris, 1590.

and De l'Ancre<sup>1</sup> in France, Erastus<sup>2</sup> and Bishop Binsfeld<sup>3</sup> and Scribonius<sup>4</sup> in Germany, Remy<sup>5</sup> in Lorraine, Boguet<sup>6</sup> in Franche-Comté, Delrio<sup>7</sup> in the Netherlands, Torreblanca<sup>8</sup> in Spain, and in Great Britain Bishop Jewell and Perkins<sup>9</sup> and the royal inquisitor, James of Scotland and of England,<sup>10</sup> with a multitude everywhere of lesser note or later date. It was the golden age of the witchcraft literature, as of witchcraft itself. Enterprising publishers sought in vain to sate the public appetite by throwing together, in awkward folios or fat duodecimos, all the books they could find on the subject.<sup>11</sup> The news-letters and *Neue Zeitungen*, printed or written, which had taken the place of the sermons and satires of the Reformation, as the newspaper was soon in

<sup>1</sup> Or Lancre. "Tableau de l'inconstance des mauvais anges et démons, où il est . . . traicté des sorciers," Paris, 1612. "L'incrédulité et mescreance du sortilège," Paris, 1622.

<sup>2</sup> "De lamiis, seu strigibus," Basel, 1577.

<sup>3</sup> "De confessionibus maleficorum et sagarum," Trier, 1589. "Commentarius in Tit. de Maleficis et Mathematicis," Trier, 1592.

<sup>4</sup> "De examine et purgatione sagarum per aquam frigidam epistola," [1583]. "De sagarum natura et potestate," Marburg, 1588. "Responsio ad examen ignoti patroni veritatis de purgatione sagarum," Frankfurt a. M., 1590.

<sup>5</sup> Latin, Remigius. "Daemonolatreia," Lyons, 1595.

<sup>6</sup> "Discours exécration des sorciers," Paris, 1602.

<sup>7</sup> Or del Rio. "Disquisitiones magicæ," Louvain, 1599-1601. The edition ascribed by Grasse (and by others following him) to 1593 is a myth. If this were not abundantly proved by Delrio's own prefaces and by the approbations of the censors, we have in the correspondence of Justus Lipsius (in his letters to Delrio) conclusive testimony. Lipsius himself suggested the title of the book, in whose progress he took the liveliest interest. In the National Library at Brussels (where I have examined it) is an earlier and much briefer draft of Delrio's book, dated 1596 and bearing the title "De superstitione et malis artibus."

<sup>8</sup> Or Villalpando. In his "Epitome delictorum, sive De magia," Seville, 1618, and in his "Daemonologia," Mainz, 1623.

<sup>9</sup> "A discourse of the damned art of witchcraft," Cambridge, 1610.

<sup>10</sup> "Daemonologie," Edinburgh, 1597. James was undoubtedly the prime author of the new and harsher English statute against witchcraft, which, with a fresh edition of his "Daemonologie," appeared in the year (1603) of his accession to the English throne.

<sup>11</sup> It was the day of the "Theatrum diabolorum," of the "Theatrum de veneficis," of the "Mallei maleficarum"—now swollen by supplements to thrice the bulk of the original "Malleus," and growing every year.

turn to take their own, carried to every fireside, in rude rhyme and ruder wood-cut, the tale of the countless burnings which planted charred stakes like shade-trees before city and hamlet of the Continent, or of the prickings and swimings and wakings with which English and Scottish procedure consoled themselves for the want of the rack. The murmur of protest, ever fainter, had all but died out.<sup>1</sup> In France, where alone doubt thrived, skeptics like Montaigne and Charron were far too wise in their generation to embody their incredulity in monographs; and even Gabriel Naudé, who in 1625 dealt the superstition a sharp blow by the publication of his "*Apologie pour les grands personnages qui ont été faussement soupçonnés de magie*," had the prudence to confine himself strictly to times at a safe distance from

<sup>1</sup> True, there was still, in many quarters, an unreconciled public sentiment, and even now and then an open though unpublished deprecation. It has long struck the attention of historians that, even in witch-ridden Germany, the great imperial city of Nuremberg seems free from the persecution. Its criminal code was the Carolina; yet a contemporary manuscript copy of its executioner's records, from 1600 to 1692, in the possession of the President White Library, shows not a single execution for witchcraft proper. I hold in my hand a document—so far as I know unprinted, and certainly unknown to the historians of witchcraft—which may partially explain this. It is a manuscript, in a sixteenth century hand, on whose cover I read, "*Der Nürnbergischen Theologen Ainhellige Antwort, über etliche Puncten, die Unhulden betreffent*"; and at the head of its first page, more explicitly, "*Ainhellige Antwort der Hochgelerten Theologi unnd Predicanten zu Nürnberg: auff die Supplication des Raths zu Weisenburg an die Eltern herren dess geheimen Raths alhie zu Nürnberg: umb unterrichtung: Wie sie sich mit iren Hexen unnd Unhulden verhalten sollen, unnd wass in Göttlicher heiliger Schrift darvon gegründet sey.*" At the end are the signatures of the six pastors of Nuremberg, and the date—1590. Through thirty weary pages the city clergy wrestle with the problem set them; and superstitious enough seems their answer. They believe fully in witchcraft and in its punishment—nay, they establish both in all their horrible detail out of Holy Writ. And yet (the influence of the canon *Episcopi* is clearly not dead, even for Protestants) they deny that the witches can transform themselves, or ride through the air, or cause wind or hail-storm; all this is mere illusion. And so do they fence about the prescribed procedure with their cautions against trusting the testimony of the witches themselves or the word of the executioner or charges against persons of else unblemished reputation; that, seeing the most prolific sources of the spread of the persecution thus cut off, one no longer wonders, if such were the spirit of even her theologians, at Nuremberg's own immunity.

the present. But, in 1631, the brave young Jesuit poet, Friedrich von Spee—saint and martyr by a higher canonization than that of the Church—dared to publish, though without his name and unknown to his superiors, the eloquent "*Cautio criminalis*" which once more gave the persecution pause. Based on his own experience as a confessor to the witches, and attacking not the theory but only the procedure, it won attention in quarters unreachable by polemic.

There followed an age of better omen. Steadily, but almost as quietly as it had gathered strength during the Reformation, the delusion now faded before the advance of that more Christian spirit of mingled science and humanity which the world has too long stigmatized as rationalism. In one territory after another the flames died out. Jurists and theologians remained conservative, and such literature, of sermon and opinion, as was devoted to witchcraft, was mainly on the side of the superstition. From the universities a host of academic dissertations, in law and theology, echoed the orthodox tenets of the teachers—if, indeed, they were not the product of their pens. But it was apparent that they were now on the defensive. Not less significant as a symptom was the rapid growth of that literature which found in the superstition only a means of selfish profit or amusement: the collections of witch stories and devil stories which pandered to popular curiosity and love of horror. In 1657 even the older church herself, which had steadily put on her index of forbidden books the works written against the persecution, found herself constrained to issue a tardy *Instructio*<sup>1</sup> urging her inquisitors to circumspection. In England alone, where Puritan bibliolatry had ensured the dogma a longer tenure, and had found it an unexpected advocate in Joseph Glanvill,<sup>2</sup> was the struggle for a moment

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serious and the result doubtful ; but the assaults of a Gaule,<sup>1</sup> a Filmer,<sup>2</sup> an Ady,<sup>3</sup> a Wagstaffe,<sup>4</sup> a Webster,<sup>5</sup> were fast letting in the purer daylight ; and even Presbyterian Scotland was sure, however slowly, to wake to it in due time. The New England panic at Salem was but a last bright flicker of the ghastly glare which had so long made hideous the European night.<sup>6</sup> Already, even before Spee, the Dutchman Greve<sup>7</sup> had struck a blow at the root of the superstition on the Continent by attacking the use of the torture, and now, in 1691, his countryman, Balthasar Bekker, aimed one yet more deadly at its very heart by denying, in his "Betoo-verde Wereld," the personal agency of the Devil in human affairs. And its period of silent decay came sharply to an end, just at the close of the century, when, in 1701, the free-thinking Halle professor, Christian Thomas (or Thomasius, as his Latin-writing contemporaries preferred to call him), published in the name of a student his pungent "Theses de crimine magiae."<sup>8</sup>

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<sup>5</sup> In his "The displaying of supposed witchcraft," London, 1677.

<sup>6</sup> And if it surprise any that, in a paper before the American Historical Association, I say nothing of the literature of American witchcraft, I can reply only that it seemed to me a work of supererogation, if not an impertinence, to treat that literature in this presence with the brevity its place in the history of the delusion would demand.

<sup>7</sup> In his "Tribunal reformatum," Hamburg, 1624.

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So began for witchcraft the age of the "Aufklärung." For a moment its defenders, thus brought to bay, fought with tooth and nail. But, as the taunts and jeers of its assailants grew ever louder and more confident, they slunk back into obscurity. Only now and then, as the century advanced, did some stranded theologian mutter in print his grouchy protest, or some over-hasty reformer stir up a buzz of pamphlets by obtruding his rationalism into a last snoozing-place of orthodoxy. The witch burnings and hangings grew fewer and fewer and disappeared altogether, and with them the need of their justification. The publishers of the witch stories learned to appeal to readers of ever lower grades of intelligence or to throw into their tone a banter which flattered the vanity of the class that gloats over the errors of its fellows. A mass of lesser superstitions, galvanized into fresh life by scribbling adventurers, gave refuge to those enlightened before their time. And at last the storm of the French Revolution, destroying torture-chamber and code as it swept over Europe, buried in their ruins the witch-persecution and its literature, and did somewhat to clear the air for that new scientific study of its psychology and history which was to be the task of the nineteenth century.

Already, in 1712, Thomasius had devoted a thesis to the origin of the persecution,<sup>1</sup> and before his death he was able

book) and issued it afresh in German; he translated, with preface of his own, every new book upon it that appeared abroad; he encouraged his pupils to discuss it in their dissertations, or did so in their names; he assailed it in lecture and review and editorial; and he kept up the warfare till his death. An utterance of his even earlier than the "Theses" I find in his "Dissertatio ad Petri Poirleti libros de Eruditione," 1694 (reprinted in his "Programmata Thomasiana," 1724), where he already takes strong ground against the persecution, though not wholly against the superstition.

<sup>1</sup> "Disputatio juris canonici de origine ac progressu processus inquisitorii contra sagas, quam . . . praeside Dn. Christiano Thomasio . . . subjicit . . . Johannes Paulus Ipsen." That Thomasius, and not Ipsen, is its author, is abundantly clear from internal evidence; and Thomasius himself claims it as his own in subsequent writings. We have, by the way, from Thomasius's own lips (in his "Programma invitatorium" to "Dodecas quaestionum promiscuarum," Halle, 1694—cited by A. Roquette in the *Centralblatt für Bibliothekswesen*, 1887), an ironical discussion of this prevalent fashion of writing for one's pupils disputations which one afterward collected

to welcome the more elaborate history by the English clergyman, Hutchinson,<sup>1</sup> whose retrospect was, however, almost wholly confined to his own land and her colonies. Before the middle of the eighteenth century, the Lutheran divine, Hauber, had gathered what still remains the richest body of materials for the study of the subject,<sup>2</sup> and in 1784 another German pastor, Schwager, published the first volume of a general history of the witch-trials.<sup>3</sup> Yet these were but beginnings. I could have wished to close this hasty survey of the growth of the literature of witchcraft with a more careful discussion of what our own century has done towards its study; but my paper is already too long. I may barely mention the bibliography of Grässe, which, with all its omissions and inaccuracies, is still the best we have; the comprehensive narratives attempted by Horst, and Scheltema, and Scott, and Scholtz, and Soldan, and Wright, and Michel, and Heppé; the more partisan contributions of Görres, and Scherr, and Diefenbach, and Längin; the light thrown upon it by the brilliant work in neighboring fields of Wächter, and Maury, and Roskoff, and Buchmann, and Rydberg, and Conway, and Baissac, and Meyer, and Lea. But of the histories of its career in single lands, districts, towns, by a myriad of patient students, whose researches will furnish the most precious of all stores for the future historian,—of the biographies, all too few, of the heroes of the struggle,—of the valuable chapters scattered through periodicals, and proceedings, and local histories, and histories of civilization or theology or law or medicine or literature or natural science, I cannot so much as speak.

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and published under one's own name. "*Neque falsum committitur*," he thinks, "*dum quis se auctorem scribit disputationis, cujus nec lineam saepius elaboravit, saepius nec intelligit.*"

<sup>1</sup> "An historical essay concerning witchcraft," London, 1718.

<sup>2</sup> "*Bibliotheca, acta et scripta magica: Gründliche Nachrichten und Urtheile von solchen Büchern und Handlungen, welche die Macht des Teufels in leiblichen Dingen betreffen*," Lemgo, 1739-45.

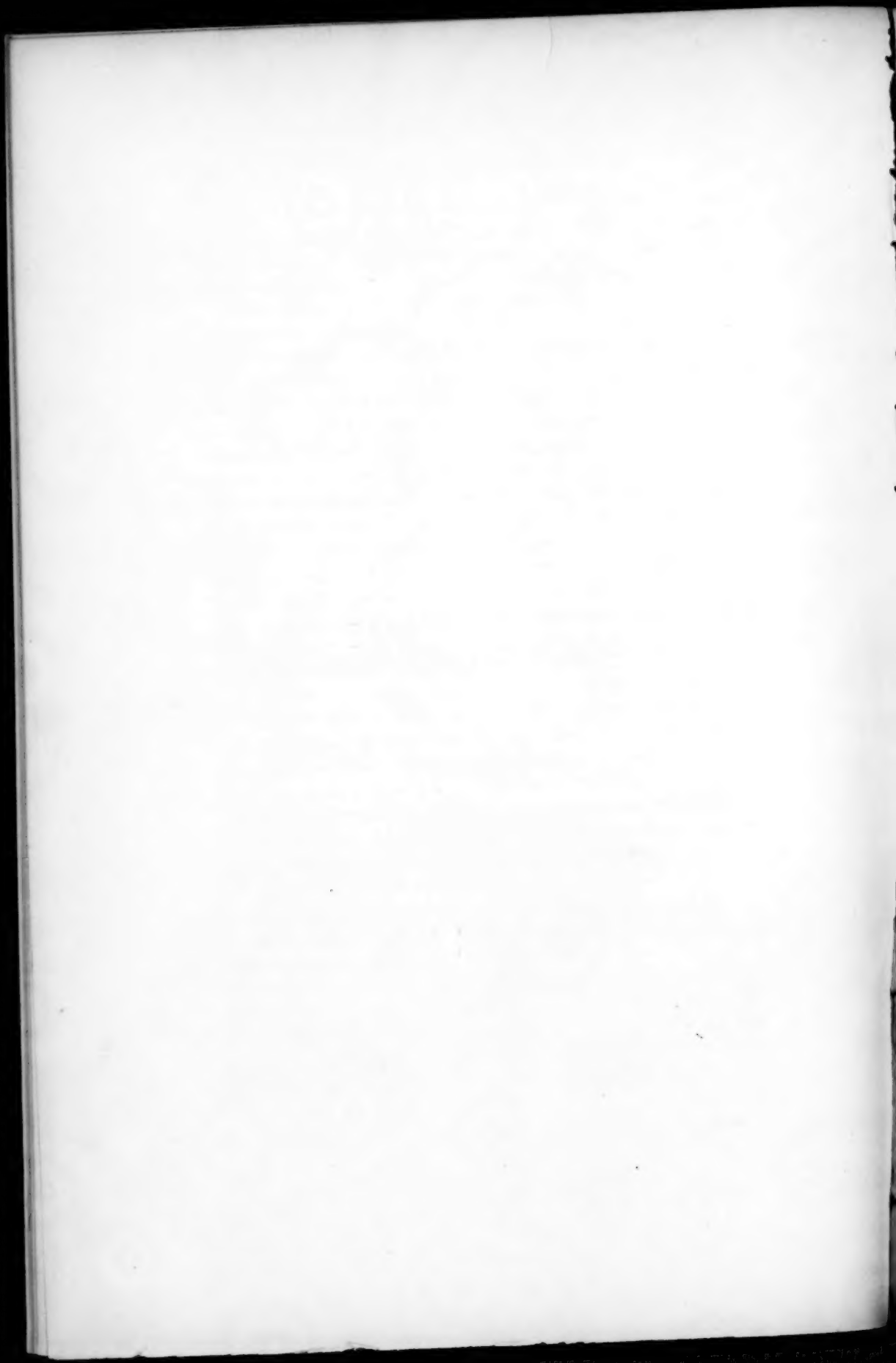
<sup>3</sup> "*Versuch einer Geschichte der Hexenprozesse*," i., Berlin, 1784. It unfortunately remained a fragment—in fact, as the author himself calls it, only an introduction.



Yet, much as has been written on the subject, it is amazing how small a proportion of it has been serious in aim or in method. Perhaps no province of history has been so largely the domain of the sciolist and the charlatan. From the "Formicarius" of Nider to the just-published hodge-podge of Davenport Adams, it has been the prey of writers who have sought to entertain more than to enlighten. As was pointed out more than a decade ago by Friedrich Nippold,<sup>1</sup> there has been as yet not an attempt at an exhaustive investigation of the history of the witch-persecution. Even the noble book of Soldan-Heppe, which is still beyond question the most thorough, makes little effort to utilize other than printed sources, and of the latter it is for German lands alone that the author's material approached completeness. Of the origin and nature of the delusion, we know perhaps enough; but of the causes and paths of its spread, of the extent of its ravages, of its exact bearing upon the intellectual and religious freedom of its times, of the soul-stirring details of the costly struggle by which it was overborne, we are lamentably ill-informed. The archives and libraries of Europe—aye, and of many parts of America as well—abound in still unpublished documents which would throw light upon these problems. The labors of local antiquaries are every day opening fresh mines for a more exhaustive history of witchcraft. When that history comes to be written, may the collection which has suggested my paper be not without its use; and may it aid in making clear to future generations why the literature of witchcraft belongs not to folk-lore, but to theology.

<sup>1</sup> In the "literarisch-kritischer Anhang über die Quellen und Bearbeitungen der Hexenprozesse," appended to his little study on "Die gegenwärtige Wiederbelebung des Hexenglaubens" (Berlin, 1875).

THE DEVELOPMENT OF INTERNATIONAL LAW  
AS TO NEWLY DISCOVERED TERRITORY.



## THE DEVELOPMENT OF INTERNATIONAL LAW AS TO NEWLY DISCOVERED TERRITORY.

By WALTER B. SCAIFE, PH.D.

Surprise is often expressed nowadays that Pope Alexander VI. should have presumed to divide the non-Christian world between Spain and Portugal; but in so doing people forget the great rôle that the Church played during several centuries. Accordingly, a glance at some of the earlier Bulls issued from the Roman See may serve to show us that those regarding America were not only not illogical, but were in fact almost a matter of course. That public opinion thereto changed and made them of none effect, was due as much or more to the march of events in general than to the progress of maritime discovery in particular.

To go back as far as the beginning of the eleventh century, we find Pope John XVIII. offering the island of Sardina to whomsoever would take it from the Saracens. Pope Gregory VII., soon after ascending the papal chair in 1073, wrote a letter, still extant, to the nobles of Spain, claiming the whole of the kingdom as the patrimony of Saint Peter, and granting Count de la Roche all that he could conquer from the Saracens in that country. In the following century, Henry II. of England asks and obtains from the See of Rome permission to conquer Ireland. The gift of the Adriatic to Venice, in recognition of the latter's services in the famous battle of Legnano, May 29, 1176, is another instance of the presumption of the Papacy in this direction; and was the foundation of the remarkable ceremony, annually celebrated thereafter, of the marriage of that republic to the sea. The quarrel between Rome and the Em-

peror Frederick II., and the excommunication and deposal of the latter, are too well known to need here any more than a passing reminder. But the claim to Scotland by Pope Boniface VIII. in the year 1300, together with the accompanying declaration that Scotland had belonged to the Church *pleno jure, et ab antiquis temporibus*, is probably not so familiar. Even after this we are scarcely prepared for the grandiloquence of another Bull of the same pontiff wherein he declares "that all Kings, Emperors, and other Sovereign Princes, whoever they may be, are subject, like other men, to be summoned before the Apostolic Courts, for every sort of cause; for such," says he "is our will, *we who, by the permission of God, command the whole Universe!*"<sup>1</sup> Such monstrous pretensions naturally called forth resistance, and we accordingly find the author of them taken prisoner by stratagem and dying soon after of chagrin. A reaction set in and for a long time the Church was more humble in its attitude. But if all this was tolerated in Europe, the center of Christian civilization, should we be surprised to find a similar claim to that which was far away, non-Christian, and apparently of comparatively little worth? Accordingly, in the middle of the fifteenth century, we find no active opposition to the papal grant of the South and East to Portugal; and even far away England acquiesces therein, on the diplomatic representations of the Pope's grantee. Such, then, was the condition of affairs when the discovery of America introduced a new element of discord into the already complicated relations of Christendom.

As a part of the preparation for Columbus' first voyage of discovery, King Ferdinand "consulted the most eminent lawyers and divines in Spain, upon the manner of taking possession. By these wise men it was determined, that as soon as they arrived, they should require the natives to *subscribe to the articles of the Christian faith, and the supreme jurisdiction of the Pope over all the earth*, which if they did not do, they were to be reduced to slavery by fire and sword."<sup>2</sup>

<sup>1</sup> Ward, "Hist. of the Law of the Nations," ii., 100.    <sup>2</sup> *Ibid.*, ii., 112-113.



When Columbus returned with news of success, Spain applied to the Pope for a title-deed to the lands that she had discovered, and also to other lands in the same region which she hoped later to discover.

This application resulted in the oft-mentioned Bulls of Alexander VI., dividing the non-Christian world between Spain and Portugal. The latter country was the first of the Christian powers to object to this arrangement; but only as to the line of demarcation, not as to the authority of the source whence the grant issued.<sup>1</sup> The result was the treaty of Tordesillas, in June, 1494, by which the line of demarcation was moved 270 leagues to the west; which treaty received the sanction of the Holy See. Wheaton says: "Portugal asserted a title derived from discovery and conquest to a portion of South America; taking care to keep to the eastward of the line traced by the Pope, by which the globe seemed to be divided between the two great monarchies."<sup>2</sup> This is manifestly an error, at least for this early time; for the treaty was made in 1494, and Portugal's first discovery in the new world was that of Cabral in the year 1500. Furthermore, Portugal's claim to the right of possession based on the fact of discovery, rather than on the title granted by the Pope, would at once have exposed the entire Orient to the invasion of Spanish ships of discovery,—the very thing that she was trying to obviate.

But the era of the Reformation was at hand, when not only the individual person but also the individual nation was to assert its independence of the dictum of any one man, even though that one should call himself the vicar of God on earth. Accordingly, we see England, France and Holland disregarding the authority of the Papacy, and pushing forward their own schemes of discovery and conquest regardless of the papal grants to Spain and Portugal. Thus was inaugurated a transitional period, when the old authority had lost its control and no new power had as yet appeared, of sufficient force to make itself supreme. The

<sup>1</sup> Calvo, "*Droit International*," i., 19.

<sup>2</sup> "*Elements*," § 166.

consequence was general self-assertion with its resultant conflicts, under the theory that might makes right.

However, in the mean time, the seeds of a new science were being sown, which was one day to take the place of the Roman See in regulating affairs between the nations of the earth. This was International Law. Hence, before proceeding to a consideration of the actual practices of the Christian nations in taking possession of and settling the new world, it may be well to turn our thoughts for a time to the development of a theory which was later to be recognized as the standard for determining the ownership of newly-discovered territory. Roman law, which served as foundation for the superstructure of modern international law, never contemplated the discovery of a vast continent, which, though populated, was to be looked upon as vacant and open to him who should first see or take actual possession of it. But it did provide for the settlement of disputes which might arise between individuals as to the ownership of lands that originally belonged to the category of no man's land. Substituting nations for persons, Grotius, the father of international law, incorporated (1625) these rules in his treatise on the Law of War and Peace.

As to things without a master, he says, if we follow nature alone, they belong to him who discovers and occupies them. Though recognizing this mode of acquisition as natural in a certain sense, he calls attention to the fact that the right of property is one produced by the civil law. Furthermore, he emphasizes the fact that property can not be acquired by a mere act of the will, giving as a common-sense reason therefor, that "the others could not know, in order to restrain themselves, what each one would like to make his own; and several persons would desire to appropriate to themselves the same object."<sup>1</sup> Thus we see already in 1625 several principles clearly laid down, although there was as yet no attempt to treat the matter in detail. The celebrated Pufendorf, writing half a century later, 1672, has

<sup>1</sup> Grotius, "*Droit de la Guerre et de la Paix*," I. ii., ch. 2. § ii. 5. Guillaunim Ed. 1867.

made no advance in principle upon Grotius, but expresses himself somewhat differently. A couple of quotations will define his position. "The Occupancy of Soil" he says, is made "with the Feet, together with an intention of manuring it, and the action of setting boundaries to it, whether exactly, or with a wider Liberty. But the bare seeing a thing, or the knowing where it is, is not judg'd a sufficient Title of Possession."<sup>1</sup> "And further, since Property implies a Right of excluding others from your Possession . . . which Right would be altogether insignificant, if it could not be effectually exercised; 'twould be in vain for you to claim that as your own, which you can by no means hinder others from sharing with you."<sup>2</sup> If the nations of Europe had only recognized and adopted this in the seventeenth century, a great deal of bloodshed would have been spared.

Following Pufendorf, after an interval of three quarters of a century, appeared in 1758 Vattel's great work on the Law of Nations, which remains to-day authoritative on many points. By this time, conflicts over colonial possessions had already become rife among the great powers; and jurists recognized the pressing need of formulating more fully and accurately the principles by which such disputes should be settled. Accordingly, we find in Vattel a careful consideration of the subject in hand. Beginning with the discovery of land without an owner, he advances to the case of dispossessing savage and nomadic occupants, and finally treats of the doctrine of conquest in war. With the last we have nothing to do; but it is to our purpose to follow somewhat in detail the line of thought of the first great jurist who treated fully the other two subjects. He says: "All mankind have an equal right to things that have not yet fallen into the possession of any one; and those things belong to the person who first takes possession of them. Thus navigators going on voyages of discovery, furnished with a commission from their sovereign, and meeting with islands or

<sup>1</sup> "Of the Law of Nature and Nations," Ed. London, 1729, Bk. iv. ch. 6, § 8.

<sup>2</sup> *Ibid.*, Bk. iv., ch. 5., § 1.

other lands in a desert state, have taken possession of them in the name of their nation; and this title has been usually respected, provided it was soon afterward followed by a real possession."<sup>1</sup> "But it is questioned whether a nation can, by the bare act of taking possession, appropriate to itself countries which it does not really occupy, and thus engross a much greater extent of territory than it is able to people or cultivate. It is not difficult to determine that such a pretension would be an absolute infringement of the natural rights of men, and repugnant to the views of nature, which, having destined the whole earth to supply the wants of mankind in general, gives no nation a right to appropriate to itself a country, except for the purpose of making use of it. The law of nations will, therefore, not acknowledge the property and sovereignty of a nation over any uninhabited countries, except those of which it has really taken actual possession, in which it has formed settlements, or of which it makes actual use."<sup>2</sup> "If at the same time two or more nations discover and take possession of an island without an owner, they ought to agree between themselves, and make an equitable partition; but, if they cannot agree, each will have the right of empire and the domain in the parts in which they first settled."<sup>3</sup> Turning from desert land to that occupied by wandering tribes, Vattel continues: "Every nation is then obliged by the law of nature to cultivate the land that has fallen to its share; and it has no right to enlarge its boundaries, or have recourse to the assistance of other nations, but in proportion as the land in its possession is incapable of furnishing it with necessaries. There are others who, to avoid labour, choose to live only by hunting, and their flocks. Those who still pursue this idle mode of life, usurp more extensive territories than, with a reasonable share of labour, they would have occasion for, and have, therefore, no reason to complain, if other nations more industrious and too closely confined, come to take

<sup>1</sup> "Law of Nations," l. i., § 207, p. 98.

<sup>2</sup> *Ibid.*, l. i., § 208, pp. 98-99.

<sup>3</sup> *Ibid.*, l. ii., § 95, p. 170.

possession of a part of those lands."<sup>1</sup> "Their [the Indians'] unsettled habitation in those immense regions cannot be counted a true and legal possession; and the people of Europe, too closely pent up at home, finding land of which the savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies . . . We do not, therefore, deviate from the views of nature, in confining the Indians within narrower limits."<sup>2</sup> This is dangerous language for a jurist to hold; for, transferred from nations to individuals, it would justify the deprivation of the rich by the poor, of their superfluous possessions. That Vattel himself was sensible of this, appears from a passage that occurs in a later part of his work, however, in a different connection, where he says: "Whoever agrees that robbery is a crime, and that we are not allowed to take forcible possession of our neighbor's property, will acknowledge, without any other proof, that no nation has a right to expel another people from the country they inhabit, in order to settle in it herself. Notwithstanding the extreme inequalities of climates and soils, every people ought to be contented with that which has fallen to their share. Will the conductors of nations despise a rule that constitutes all their safety in civil society? Let this sacred rule be entirely forgotten, and the peasant will quit his thatched cottage to invade the palaces of the great, or the delightful possessions of the rich."<sup>3</sup>

But still harboring the feeling that non-Christian and Christian nations are to be judged by different rules, the same author, speaking of the latter, says: "As every thing included in the country belongs to the nation,—and as none but the nation, or the person on whom she has devolved her right, is authorized to dispose of those things,—if she has left uncultivated and desert places in the country, no person whatever has a right to take possession of them without her con-

<sup>1</sup> *Ibid.*, l. i., § 81, pp. 35-36.

<sup>2</sup> *Ibid.*, l. i., § 209, p. 100.

<sup>3</sup> *Ibid.*, l. ii., § 90, p. 168.



sent. Though she does not make actual use of them, those places still belong to her; she has an interest in preserving them for future use, and is not accountable to any person for the manner in which she makes use of her property."<sup>1</sup> Admit that this rule is necessary for the peace of Christendom; is it not conceivable that one civilized nation might make better use of uncultivated land than another? If so, is there any ethical difference between saying, Let him who will best use it go in and take possession; and maintaining that "Other nations more industrious and too closely confined" have a right to dispossess the nomadic native of the soil? Our author's position is even better illustrated by his opinion in regard to the border tract which the Romans laid waste to defend them from the incursions of the Germans. Speaking of the protest against this measure by one of that nation in the time of Nero, he says: "The German's remonstrance would have had a good foundation, had the Romans pretended to keep without reason a vast country which was of no use to them; but those lands which they would not suffer to be inhabited, serving as a rampart as against foreign nations, were of considerable use to the empire."<sup>2</sup> Was it, then, better to have those lands laid waste for the preservation of the degenerate Roman than to leave them in a state of nature to afford subsistence to the Germans, who, according to the great Roman authority himself, were morally far superior to their conquerors? Remember, we are looking at the question from an ethical standpoint. If it is made a question of expediency, then let the mask fall also in regard to the settlement of America, and say the Europeans wanted that vast territory, and having the greater strength, simply took it.

We next turn to the discussion of a concrete subject, viz: Dr. Johnson's article on the dispute between Spain and England as to the ownership of the Falkland Islands. Therein he remarks: "We have now for more than two centuries, ruled large tracts of the American continent, by a claim which, perhaps, is valid only upon this consideration,

<sup>1</sup> *Ibid.*, l. ii., § 86, p. 167.

<sup>2</sup> *Ibid.*

that no power can produce a better; by the right of discovery, and prior settlement. And by such titles almost all the dominions of the earth are holden, except that their origin is beyond memory, and greater obscurity gives them greater veneration. Should we allow this plea to be annulled, the whole fabrick of our empire shakes at the foundation."<sup>1</sup>

"Almost every newly-acquired territory is, in some degree, controvertible, and till the controversy is decided, a term very difficult to be fixed, all that can be had is real possession and actual dominion."<sup>2</sup> He neglects, however, to define what he understands by "real possession and actual dominion," and, as we shall later see, these terms are capable of various interpretations. Montesquieu mentions the partition of the non-Christian world between Spain and Portugal, and recognizes the great difference between theory and practice. In one particular he was certainly behind the best thought of his time, for he observes that "One people may cede to another the sea, as it can cede the land."<sup>3</sup> If that were the case, it would be possible for a people to have possession of the ocean,—an opinion now universally rejected.

Herewith we leave the eighteenth century and pass to the nineteenth. In the meantime the United States had asserted and maintained their liberty; and a different aspect both practical and theoretical was thereby given to the treatment of non-European territory.

In America the culmination was the assertion of the Monroe doctrine. In Africa, we may look upon the foundation of the Congo State as the highest point yet reached, as to the subject in hand, by international law put into practice. Theoreticians have, during this period, been by no means idle; and numerous works have appeared which treat the matter more or less fully. Wheaton sums up the whole situation as follows: "Their [the European nations'] claim to the possessions held by them in the new world, discovered

<sup>1</sup> Works, vol. vi., p. 197. Essay on the Falkland Islands.

<sup>2</sup> *Ibid.*, p. 196.

<sup>3</sup> "Esprit des Lois," i., 520, l. xxi., ch. 21.

by Columbus and other adventurers, and to the territories which they have acquired on the continents and islands of Africa and Asia, was originally derived from discovery, or conquest and colonization, and has since been confirmed in the same manner by positive compact."<sup>1</sup> Phillimore, the great English authority, treats this, as he does other subjects of international law, in minute detail. We quote such passages as appear to us most important to our object. "*Discovery, Use, and Settlement* are all ingredients of that *Occupation* which constitutes a valid title to national acquisitions." "*Discovery*, according to the acknowledged practice of nations, whether originally founded on *Comity* or *Strict Right*, furnishes an *inchoate* title to *possession* in the discoverer. But the discoverer, must either, in the first instance, be fortified by public authority and by a commission from the State of which he is a member, or his discovery must be subsequently adopted by that State."<sup>2</sup> "So far, according to the practice of nations, strengthened in some degree by the principles of natural law and the reason of the thing, the fact of authorized discovery may be said to found the *right to occupy*."<sup>3</sup> "The next step is to consider what facts constitute an occupation; what are the signs and emblems of its having taken place: These acts, then, by the common consent of nations, must be *use of* and *settlement* in the discovered territories."<sup>4</sup> "Indeed, writers on International Law agree that Use and Settlement, or, in other words, *continuous use*, are indispensable elements of occupation properly so called. The mere erection of crosses, landmarks, and inscriptions is ineffectual for acquiring or maintaining an exclusive title to a country of which no real use is made."<sup>5</sup> "But when Occupation by Use and Settlement has followed upon discovery, it is a clear proposition of Law that there exists that corporal possession (*corporalis quædam*

<sup>1</sup> "Elements of Int. Law," § 165.

<sup>2</sup> Int. Law, i., 269.

<sup>3</sup> *Ibid.*, i., 270.

<sup>4</sup> *Ibid.*, i., 271-2.

<sup>5</sup> *Ibid.*, i., 273.

*possessio, dedentio corporalis*) which confers an exclusive title upon the occupant, and the *Dominium eminens*, as jurists speak, upon the country whose agent he is."<sup>1</sup> "The nature of Occupation is not confined to any one class or description; it must be a *beneficial use and occupation* (*le travail d'appropriation*); but it may be a settlement for the purpose of prosecuting a particular trade, such as a fishery, or for working mines, or pastoral occupations, as well as agricultural use, although Bynkershoek is correct in saying, '*cultura utique et cura agri possessionem quam maxime indicat.*'"<sup>2</sup> "They all [writers on International Law] agree that the Right of Occupation incident to a settlement, such as has been described, extends over all territory actually and *bona fide* occupied, over all that is essential to the real use of the settlers, although the use be only inchoate, and not fully developed; over all, in fact that is necessary for the integrity and security of the possession, such necessity being measured by the principle already applied to the parts of the sea adjacent to the coasts, namely, *ibi finitur imperium ubi finitur armorum vis*: The application of the principle to a territorial boundary is, of course, dependent in each case upon details of the particular topography."<sup>3</sup> "With respect to a continent . . . The occupation of a portion of the sea-coast gives a right to the usual protecting limit at sea, which is holden to exist in all countries. The right of dominion would extend from the portion of the sea-coast actually and duly occupied inland, so far as the country was uninhabited, and so far as it might fairly be considered to have the occupied *seaboard* for its natural outlet to other nations."<sup>4</sup> To what is here said, more recent writers on International Law have nothing essential to add.

The present state of juridical opinion as to the law of newly discovered territory, may perhaps be best summarized in the language of Mr. David Dudley Field, in his "Outlines of an International Code." It is as follows: "Every nation has the right to search for new territory."

<sup>1</sup> *Ibid.*, i., 274.

<sup>2</sup> *Ibid.*, i., 285-6.

<sup>3</sup> *Ibid.*, i., 277-8.

<sup>4</sup> *Ibid.*, i., 275.

"Authority to search for new territory which shall inure to the benefit of a nation, may be conferred by it on the members of any nation whatever by a previous authorization or by subsequent ratification. Without such authority, a discovery made even by a member of the nation confers no right upon it."

"A discovery not [previously authorized by the nation cannot be subsequently ratified by it, to the prejudice of any other nation, without the consent of the latter."

"The nation, under whose authority a discovery of territory is made, has the right to take possession of it as a part of its territory."

"The intent to exercise the right of possession can be manifested only by an actual beneficial occupation."

"If the discovery of territory is a continental sea-coast, or any part of it, possession thereof is deemed to extend into the interior, to the sources of the rivers emptying within the discovered coast, to all their branches, and the territory watered by them."

"The right of possession is deemed abandoned when the intent to exercise it is not manifested within twenty-five years after the discovery."<sup>1</sup>

In these few short paragraphs, Mr. Field has embodied the general consensus of present juridical authority on this important subject. We see therein a great advance on the work of Grotius. In the first place, centuries of experience have shown exactly the needs of the situation; and the theory has accordingly become more practical. Then, too, the civilized nations have been slowly approaching that ideal, still, however, far enough distant, which teaches that international disputes may be settled just as well, if not better, by reason than by the might of the sword, and that, too, with an immense saving of life and property. It is to this gradual improvement in practice, following slowly and at a distance the advance of theory, that we would now turn our attention.

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<sup>1</sup> "Outlines of an International Code," Pt. i., ch. 7.



Here we propose to consider briefly the nature of the charters given by the various governments to the adventurers who went on voyages of discovery, the quarrels that arose out of the conflicting claims, with special reference to their settlement by treaty, culminating in the establishment, by the Great Powers, of the Congo State, and the rules of procedure laid down in connection therewith. Spain, recognizing the validity of Portugal's title to the Orient, as granted by the Pope, sent Columbus to the west with a charter which conferred on him the admiralty of such "islands and continent in the ocean" <sup>1</sup> as he might discover. Where it was by no means certain that any land whatever would be found, such a grant was not too sweeping in its terms. The next step, however, was that of the Pope's Bulls, conferring on Spain, for all time, the exclusive right to search for unknown lands in that quarter of the world. In the first one occurs the following language: "And as we have been given, by the abundance of Apostolic grace, and have received more freely and boldly the oversight of such important matters, we do, by the Apostolic authority and by the tenor of these presents, of our own free motion, and not at the instance of your said petition, or that of another for you thereupon, but of our mere liberality and certain knowledge, and by the plenitude of Apostolic power, give, concede, and assign in perpetuity, to you and your heirs and successors, Kings of Castile and Leon, all and singular such unknown lands and islands aforesaid, and already discovered by your agents, and to be discovered in the future, which have not been constituted under the actual temporal dominion of any other Christian powers; we, as Vicar of Jesus Christ, and by the authority of almighty God, conferred upon us in the Blessed Peter, do give, concede, and assign them to you, together with all their dominions, cities, towns, places, and villages, with their rights and jurisdictions and all appurtenances whatsoever, and we do make, constitute, and depute you and your aforesaid heirs and the successors invested by them the Rulers thereof, with

<sup>1</sup> "Charters and Constitutions," i., 304.

full and free power, authority, and jurisdiction of every kind." To any one presuming to infringe the powers hereby conferred, the Pope threatens "the displeasure of Omnipotent God and of the Blessed Apostles, Peter and Paul." Henry VII. of England paid no attention to either the papal grant of privileges to Spain or the threat therein contained; and issued to John Cabot and his sons, in 1496, a charter, granting privileges more extensive even than those conferred on Columbus; for it conferred upon them, "full and free authority to sail to all parts, regions and gulfs of the oriental, occidental and northern seas," and to take possession of "any islands, countries, regions or provinces whatsoever, of gentiles or infidels, in whatever part of the world they may be placed, which were unknown before this time to all Christians." <sup>1</sup>

Sailing under this charter, Cabot discovered the continent of North America, and that too, before any subject of Spain had seen the mainland of the new world. But England did not push the work of discovery till toward the close of the next century; or that of colonization till the opening of the seventeenth century. This later period of activity may be considered as beginning with Raleigh's charter of May 25, 1584, by which he received from the English crown, for himself, his heirs and assigns, "free libertie and licence from time to time, and at all times foreuer hereafter, to discover, search, find out, and view such remote, heathen and barbarous lands, countreis, and territories not actually possessed of any Christian prince, nor inhabited by Christian people, as to him, his heires and assignes, and to euery or of them shall seeme goode." <sup>2</sup> He was to have the fee simple of, and the rights of government over all "that shall abide within 200 leagues of any of the saide place or places, where the said Walter Raleigh . . . shall inhabite within 6 years next ensuing the date hereof." Notice here that England considers that possession at one point confers juris-

<sup>1</sup> Translated from original in Navarrete, ii., 31.

<sup>2</sup> Rymer, "*Foedera*," xii., 595-6.

<sup>3</sup> "*Char. & Cons.*," ii., 1379.

diction over a radius of 200 leagues. We shall later see that she forced Spain to a treaty, when their interests came into conflict and Spain was unable to defend her rights, by which Spanish colonies were confined to a jurisdiction over a radius of only ten leagues. In the grant of 1606 to the Virginia Company, the more definite limits of from 34 degrees to 45 degrees of north latitude in America were assigned. Later, by the charter of Carolina, issued in 1665, territory as far south as the twenty-ninth degree of north latitude was granted, notwithstanding the fact that the Spaniards had first explored the region, and that a Spanish colony of a century's existence was within the territory named. France had early sent explorers to the new world, and essayed to make settlements there; now in South America, now in the region at present occupied by the United States, and now on the river St. Lawrence. Holland and Sweden essayed to plant off-shoots also in the new world. As Spain claimed the entire new world, under the papal grant, except what fell to Portugal in virtue of the treaty of Tordesillas, as England claimed the entire North American continent, by reason of Cabot's discovery; as the other powers claimed portions of the western hemisphere because of local discoveries; and as not a single one of them, Sweden excepted, was willing to abate his pretensions, without an appeal to arms, there arose bloody conflicts, which were ended by solemn treaties, disposing of these vast regions according as the fate of battles had decided. As in the original charters, so in these international treaties, the hordes of native inhabitants were entirely left out of consideration and the lands were treated as *res nullius*. The English charter of 1609 conveyed to the London Company the territory 200 miles to the north and to the south of Point Comfort, with the islands within 100 miles of the coast, while the grant of the mainland was to extend "from the Sea-Coast of the Precinct aforesaid, up into the land throughout from Sea to Sea, West and Northwest."<sup>1</sup> Here, England was laying claim to and grant-

<sup>1</sup> *Ibid.*, ii., 1897.

ing a district, extending across the entire continent, of whose size she was herself ignorant, and into whose interior none of her subjects had ever penetrated to any considerable extent. She gave the grant definite limits on the sea-coast, and an extent into the sea that no modern nation would think of claiming, and extended it inland not only with the same width west to the Pacific, but to the west and northwest. If Spain's right to the whole of the new world was not conceded because of prior discovery and the grant of the Pope, by what right could England lay claim to the entire breadth of the continent, including an immense stretch of the Pacific coast, on which neither her discoverers had been the first to appear, nor had she been the first to plant settlements. As long as the conflicting claims were only on paper it made little difference, and the peace was not endangered; but when settlements began to multiply, then trouble was unavoidable. Nature herself was often enough cruel to the adventurers who dared pry into her hitherto secret places; but man was no more considerate of his fellows, in that struggle, not for existence, but for power and dominion, which characterizes so gloomily the early history of America. The Spaniards early drove the French from the eastern coast of South America, and from the neighborhood of St. Augustine. In 1610 Samuel Argall, with a ship's company of English adventurers, broke up an incipient French settlement on the coast of Nova Scotia. Not a single one of these nations really needed the land it was trying itself to occupy, not to mention that being taken up by its neighbors; but in the spirit defended by Vattel, they were attempting to secure a hold for the future; and each was accordingly jealous of the possibility that another might get something which would have been valuable to himself. In 1670 England and Spain signed a treaty at Madrid, by which each promised not to sail or trade in the ports or places of the other,—thus virtually recognizing the doctrine of the right conferred by possession, but not by discovery. If discovery of a few points on the sea-coast does not confer title, but detailed exploration, followed by settlement, does

make a valid claim, then France had an undoubted right to Acadia, until she ceded it to Great Britain by the treaty of Utrecht, in 1713; and England's title thereafter rested upon conquest, and not upon that of prior discovery and settlement. Acadia was ceded "in its entirety, conformably to its ancient bounds." But, unfortunately, its ancient bounds had never been defined, and that furnished a pretext to British aggressiveness to keep the dispute open, with the hope of gaining ever more thereby. With little troubles gradually developing into greater ones, the two countries finally entered into the bloody war of the middle of the eighteenth century, known under various appellations, which was ended by the treaty of Paris, signed February 10, 1763. According to that treaty, "His Very Catholic Majesty renounces all the pretensions that he has formerly had, or could have had, to Nova Scotia or Acadia . . . with all its Dependencies"; also Canada, with all its dependencies, etc. But, according to Article VII., "It is agreed that, for the future, the Borders between the States of His Britannic Majesty, and those of His Very Catholic Majesty, in that part of the world, will be *irrevocably fixed* by a line drawn by the Middle of the River Mississippi from its Source to the River Iberville, and thence by a Line drawn by the Middle of this River, and the Lakes Maurepas and Ponchartrain, to the Sea,"<sup>1</sup> etc., except the city and island of New Orleans. Here was a renunciation for all time by Great Britain, of any claim to that part of the American continent lying west of the Mississippi River. She had heretofore laid claim to the entire breadth of the continent, on the strength of the settlements on the Atlantic coast; now she resigned these claims "irrevocably." When we recall that it was then universally believed that the source of the Mississippi was very much farther north than it really is, we see that Great Britain intended to resign all claim to the West, at least south of say the fifty-third degree of north latitude, the place of the source of the Mississippi on the maps of the period. As the

<sup>1</sup> Martens' "Recueil des traités," 2d ed., vol. i.



western limit of Canada had never been fixed, we may give England the benefit of the doubt, and admit that that province was now to extend to the Pacific, but certainly not further south than the parallel of the source of the Mississippi river. By a treaty of the same date, England received from Spain, Florida, and "all that Spain possesses on the Continent of North America, to the east and southeast of the River Mississippi." Thus England had been able, by the force of arms, to make good her claims to the eastern half of North America. Hackluyt, in his "Discourse on Western Planting," sums up the grounds of England's claims to America. They are, first, the discovery and planting of America by Madock ap Owen Guyneth, in the year 1170. Second, England's acceptance of Columbus' proposition through his brother Bartholomew, as "there was no delaye nor wante of goodd will of the Kinges parte to sett furthe the action, whoe willingly condescended to all Columbus demaundes. (!) Third, the discovery of the Cabots. "Howbeit," he remarks, "Gabota did more than see the contrie, for he wente on lande on divers places, tooke possession of the same accordinge to his patente which was granted to his father, John Gabot, to Lewis, himself, and Sancius, his brethern, beinge to be sene in the Rolles and extant in printe."<sup>1</sup> England gained all that she could by asserting the right of first discovery, and relinquished all claim to territory west of the Mississippi; but her appetite was not sated, and we find her asserting also other grounds as to title to lands in the new world. This is well expressed by Calvo as follows: "The British government has created a public law which it applies specially to feeble States, and which is called the law of force; and it puts it into execution every time when it is convenient to its interests and despotic tendencies."<sup>2</sup> It was by this "law" that Great

<sup>1</sup> Hackluyt: "A Discourse on Western Planting," Doc. Hist. of Maine, ii., p. 121, *et seq.*

<sup>2</sup> Calvo: "Recueil des Traités . . . de l'Amérique Latine," i., p. 16. For general condition of international practices during the eighteenth century, see Holtzendorff's "Encyclopädia der Rechtswissenschaft," 4te Auflage, S. 1195.

Britain took the New Netherlands in 1664; the Falkland Islands, in 1665; and finally forced Spain, in an hour of difficulty, to sign the Convention of the Escorial, October 28, 1790. A portion of this treaty reads as follows: Art. IV. "It is moreover expressly stipulated that British subjects shall not navigate, or carry on their Fishery in the said Seas, within the Space of ten Sea Leagues from any part of the Coasts already occupied by Spain."

Art. V. provides that all settlements made by both parties since April, 1789, are to be open to the trade of both nations.

Article VI. provides that no settlements are hereafter to be made by either party on the coasts of South America or on the islands adjacent thereto, south of the settlements of Spain already there; but both shall be permitted to land and fish there, but not to erect any but "temporary Buildings, serving only for those purposes."<sup>1</sup> Here we see Spain, when weakened by internal difficulties, not only limited to a jurisdiction of but ten sea leagues radius around her existing settlements, but agreeing that all her future settlements shall be as open to British trade as to her own. Furthermore, she has to promise not to plant any colonies whatever south of those already existing, although Britain never had had any valid claim to that region, either by reason of discovery or of settlement.

We may take the course of England in America, as an example, though an exaggerated one, of that pursued by the other powers; each one advanced those arguments which he thought best suited his purpose, without regard to abstract right; and took what his strength enabled him to conquer. Thus France secured a large portion of the Island of St. Domingo, the original home of Spanish settlement in America. The Netherlands, driven out of North America by Great Britain, received compensation on the southern continent, and made great headway in the Orient, in spite of the long-established claims of Portugal; the latter country divided with Spain the continent of South America, in the

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<sup>1</sup> Martens' "*Recueil*," iv., p. 497.

main according to the treaty of Tordesillas; although it required later conventions to define more accurately their respective limits. We now come to the period of the American Revolution against Great Britain, and the introduction therewith of a new element in the complication of the distribution of the land. The resulting treaties of 1783 deprived Great Britain of the territory east of the Mississippi River, with boundaries so ill defined that it cost many years of negotiation and trouble before they were finally adjusted. She returned the Floridas to Spain, and got a considerable number of the West India islands.

The United States, received into the family of nations, started out on their career with great protestations of regard for the principles of justice. Though they have not always been justifiable in their practices, they have still contributed very largely to the advancement of the rules of practice toward the ideal of the theory, in matters relating to the subject on hand. In 1795, they made a treaty with Spain, by which their mutual boundaries were more accurately defined. In 1810, they seized Florida, under provocation and to prevent it from falling into the hands of Great Britain, which would have given them an aggressive, if not hostile neighbor on the south as they already had on the north. This forcible seizure was compensated later, 1819, by the payment of money to Spain, and the relinquishing of claims to the territory south of a line agreed upon, to which they had at least a show of title, as possessors of French Louisiana, which latter had been bought outright in 1803, from France, who had received it from Spain, with limits undefined, three years previous. The same course was pursued in the trouble which arose between the United States and Mexico in reference to the annexation of Texas. Although our present great south-western possessions were conquered in war, provoked by our adversary, and so, according to the universally recognized law of conquest, could have been retained without further ceremony, the United States paid a fair compensation for them; and in 1853 purchased an additional strip, for the sake of providing good means of communication between the East and West.

The long discussion between the United States and Great Britain as to our north-west boundary tended greatly to determine the practice in such cases. We have seen that Great Britain ceded "irrevocably" all claim to territory in America, west of the Mississippi. The rights thus ceded to France were subsequently ceded by her to Spain, then by the latter country returned to France "with the same extent as it now has in the hands of Spain and as it had when France possessed it." And the district thus defined was sold to the United States. In the meantime Great Britain had come to see that the Pacific coast might be of value to her, and had forced Spain into the treaty of 1790, of which we have spoken. The first settlement of boundary lines between Louisiana and the Spanish possessions was made by the aforementioned treaty of 1819, which recognized our title to land extending to the Pacific, and lying to the north of the 42d parallel. A few American statesmen were wise enough to foresee the value of this region to the United States, and to provide for its exploration; and when Russia issued an imperial ukase on the eighteenth of September, 1821, claiming exclusive jurisdiction of "the northwest coast of America, as far south as 51° north lat.," and prohibiting "all foreign vessels from approaching within one hundred miles of the shore, under penalty of confiscation," our government protested against it and that so successfully, that Russia signed a treaty in 1824, relinquishing all claims to American territory south of 54° 40' of north latitude. England had also protested, and a year later, concluded a treaty with Russia, fixing the same parallel of 54° 40' as east and west line between their respective possessions. The Pacific coast region, lying between the parallels of 42° and 54° 40' was now claimed by both Great Britain and the United States. At an earlier period the dispute would, in all probability, have been settled by war; but the United States were always opposed to that means of forcing an agreement; and Great Britain, having compelled them to it twice, had come to know that her rebellious and now independent child was not easy to subdue. Through thirty years they argued and negotiated, with a wealth of learning and some venom on both

sides. Into this mass of evidence and argument, we cannot here enter; but it does seem to us that lines of argument in judging the matter now may be very much simplified, even though the intricacies and then methods of diplomacy led to other treatment. We believe it to have been shown already that Great Britain's claim to that territory was certainly no better, if as good as that of the United States. In the earlier days she had not claimed it because of the discoveries of Drake, Frobisher, or others, but rather as the natural extension of her possessions on the Atlantic coast. As to any claim founded on discovery, she had none better than such as the United States, as the grantee of both Spain and France, could also offer. Allowing, for the sake of argument, that, according to the treaty of 1790, she had an equal right to the whole territory south to the 42d parallel, then so had the United States up to the parallel of 54° 40'; and what was more just than to continue to the Pacific the line of demarcation already established as far as the Rocky Mountains? This, we believe, would at any time, have satisfied the United States; but England's thirst for territory would not thus be quenched; and the then methods of diplomacy required that the United States demand much more than she expected to receive, in order to be able to abate from their demands, to affect in due time a compromise. But if Great Britain could wait, so could also the United States; and time and patience brought about in a peaceful manner what otherwise might have cost a bloody and disastrous war.

The Monroe doctrine may now be looked upon as a realized fact, and it is not probable that any European power will hereafter attempt to force a colony upon any portion of the continent; so that now we may consider the boundary lines in America as fixed, at least so far as the law of newly discovered territory is concerned. There still remains, however, room for the application of such doctrines in reference to some islands of the sea, and to certain portions of the continent of Africa. Though it is scarcely to be hoped that all disputes are at an end, yet the advance, marked by the



results of the Berlin Conference in 1884, is so great, and the standard reached so high, that it may be considered that here theory and practice are united. No longer are the savage hordes looked upon as non-existent, and their country as *res nullius*. Our own United States were the first to recognize officially that "the occupants of a country, at the time of its discovery by other and more powerful nations, have the right to make the treaties for its disposal, and that private persons when associated in such country for self-protection, or self-government, may treat with the inhabitants for any purpose that does not violate the laws of nations." The International Association, which was the real founder of the Congo State, was "in possession of treaties made with over 450 independent African chiefs, whose rights would be conceded by all to have been indisputable, since they held their lands by undisturbed occupation, by long ages of succession, by real divine right. Of their own free will, without coercion, but for substantial considerations, reserving only a few easy conditions, they had transferred their rights of sovereignty and of ownership to the Association."<sup>1</sup> At the request of the German Empire, the Great Powers of the world sent their delegates to Berlin, who, there assembled, established a series of regulations, by which a line was drawn round the vast central portion of Africa, enclosing a territory that is to be free to all the world, to go and come and to trade with the natives, to navigate the great rivers and to make settlements there; instead of fighting over it, destroying each other and the natives too, as so often happened in the new world. Furthermore, a couple of rules were laid down and accepted with the rest by the Powers, for the future regulation of the ceremony to be observed in taking possession of new territory. These are as follows: "Chapter VI. Declaration relative to the essential conditions for new annexations on the African Continent to be considered effective. Article XXXIV. The Power which in future takes possession of a territory on the coasts of the African Continent situated

<sup>1</sup> H. M. Stanley, "The Congo," ii., 379.

outside its actual possessions, or which, having none there, has first acquired them, and the Power which assumes a protectorate, shall accompany either act by a notification addressed to the other powers signatory to the present Act so as to enable them to protest against the same if there exist any grounds for their doing so." "Article XXXV. The Powers signatory to the present Act recognize the obligation to ensure in the territories occupied by them, on the coasts of the African Continent, the existence of an adequate authority to enforce respect for acquired rights, and for freedom of trade and transit wherever stipulated."<sup>1</sup>

Herewith is our task ended. We have attempted to show how, as the period of discovery opened, the Pope assumed to be, and, in a measure at least, was recognized, as the arbiter and overlord of the non-Christian world; that this theory was rejected, and a period ensued during which the nations acted according to the barbarous maxim that might makes right. In the meantime, great minds were active, formulating a nobler doctrine, which, for a long period neglected, was one day in its perfection, to bear good fruit and lead men to better things. The nations of Europe, in practice, first claimed that discovery, with the formal declaration of taking possession, gave the right of excluding the rest of the world therefrom for ever. But that was not feasible, and actual possession was later recognized as necessary to found a valid claim; but still the extent of territory to which such possession gave a right was not settled. This difficulty also was gradually overcome, and justice, in large measure at least, took the place of force. Finally, all the Great Powers have united in forming one great State for the common weal, dealing justly by the aborigines and by each other, thus realizing in fact the dream of the idealists for centuries. Was ever greater encouragement than this offered to scientific theorizers, dreamers, idealists, if you will? In the midst of the untoward circumstances, the turmoil, strife and reign of force of the seventeenth century, a theory was broached by a thoughtful, judicious, scientific

<sup>1</sup> *Ibid.* ii., 457.

man of public affairs, which was taken up and improved by his successors, as time and circumstances showed the actual needs of the situation ; and thus, ever striving toward the ideal, by the light of practical experience, they were enabled, finally, to set before the world a perfected doctrine, high in its aim and still capable of practical application, whenever the passions of men had so far been brought under control, that they would realize the truth of the doctrine that universal justice is not only a possibility but a paying one. Can we then not accept the lesson here offered, and each one set up for himself in his specialty the highest ideal which his mind is capable of framing, and then do his best toward attaining it, strong in the conviction that our successors will take it up where we leave off and carry it onward, that some day men will see the good that is in it, and thus be led to join practice to theory, when the two, happily united, will, in the strength of their union, march on in triumph to perfection ?



THE SPIRIT OF HISTORICAL RESEARCH.





## THE SPIRIT OF HISTORICAL RESEARCH.

By JAMES SCHOULER.

What, let us ask, is history? And by what image may we present to the mind of the student a proper conception of that department of study? Emerson, our American Plato, pictures as a vast sea the universal mind to which all other minds have access. "Of the works of this mind," he adds, "history is the record." That idea is a leading one of this philosopher. Man he considers the encyclopædia, the epitome of facts; the thought, he observes, is always prior to the fact, and is wrought out in human action.

Such a conception may suit the philosophic mind; it may commend itself to men of thought, as contrasted with men of action. But it seems to me too vast if not too vague a definition for an appropriate basis to historical investigation. No one can project history upon such a plan, except Man's Maker, the Universal Mind itself. Thought itself may precede the fact, but the two do not coincide nor form a perfect sequence. The empire of thought differs greatly from that of personal action; we each live but one life, while we may propose a hundred. The works of the mind involve all knowledge, all reasoning, all experience. Nor can we with accuracy picture the human mind as a tranquil sea tossing only in its own agitations, but rather as an onward force working through strong physical barriers. History, in truth, is the record of human thought in active motion, of thought which is wrought out into action, of events in their real and recorded sequence. The individ-

ual acts upon his external surroundings; those surroundings re-act upon him and upon his fellows. Men, tribes, nations, thus acting, mould one another's career and are moulded in return. History leaves the whole boundless empire of unfettered mental philosophy, of fiction, of imagination. It deals with facts; it notes and narrates what has actually transpired and by whose agency; and it draws where it may the moral. History, in short, is the record of consecutive events—of consecutive public events.

This broad truth should be kept in view, that the human mind (under which term we comprise volition, and not the intellectual process alone), that the individual character acts upon the circumstances surrounding it, upon external nature, upon external fellow-beings. These persons and things external not only modify and influence one's attempted action, but modify his thought and feeling; they re-act upon him, form and influence his character, his destiny. This makes human history, and it makes the forecast of that history forever uncertain.

The picture, then, that we should prefer to present to the imagination is not of one vast universal mind, calmly germinating, fermenting, conceiving; not of one mind at equilibrium, having various inlets—but of a torrent in motion. They did wisely and naturally who mapped out for us a stream of history flowing onward, and widening and branching in its flow. Downward and onward, this impetuous torrent of human life obeys its own law of gravitation. It advances like a river, with its feeders or its deltas: or like the march of an immense army, now re-enforced, now dividing into columns, now re-uniting,—but going forever on and never backward. Let us reject, therefore, the idea of an *à priori* history and whatever conception conjures up a human mind planning history in advance and then executing it. Buckle was oppressed to death by the burden of such an idea as that of reducing the whole history of this world's civilization to a law of natural selection. There is no rigid scientific development to the human race. The particle of divine essence which is in man formulates, creates,

compels to its will, changes because of its desire for change; though, after all, it bends to the laws of natural necessity. The man of genius may invent; he may construct a wonderful motive engine which propels by steam or electricity; yet he may be battered to pieces by this same machine, if ignorant or careless of some latent physical cause. We speak, too, of prophecy; but prophecy is vague. "Westward," says Bishop Berkeley, "the course of empire takes its way;" and he looked through the vista of a century. But who, of all our statesmen and philanthropists who flourished forty years ago—and wise and great, indeed, were many of them—foretold with accuracy how and through what agencies the problem of American slavery, which they so earnestly discussed, would reach its historical solution?

To take, then, our simile of the onward torrent from distant sources, or the army advancing from afar. Observe how absorbed was ancient history with the larger streams fed by hidden fountains; how its narrative was confined to the great leaders of thousands and tens of thousands. But in modern history each individual has his relative place; and looking as through a microscope we see an intricate network of rills from which the full stream is supplied. In this consists the difference between ancient and modern life, ancient and modern history. Simplicity is the characteristic of the primitive age; complexity is that of our present civilized and widely multiplied society. The ancient force was the force of the pre-eminent leader—of the king, the warrior-chief; but the modern force is that rather of combined mankind—of the majority. Individuals were formerly absorbed under the domination of a single controlling will, but now they are blended or subdued by the co-operation of wills, among which the greatest or pre-eminent is hard to discover. The course of history all the while is consecutive, knowing no cessation. There is a present, a past, and a future; but the present soon becomes the past, the future takes its turn as the present. And, after all, the only clear law of history is that of motion incessantly onward.

As students of history, we next seek a subject and a point of view. Look, then, upon this vast chart of the world's progress. Retrace its course, if you will, and choose where you shall explore. Do not choose at random, but with this great universal record to guide you as a chart; as a chart capable, indeed, of correction, but in the main correct enough to serve the navigator. Having thus chosen, circumscribe your work; confine your exploration to a particular country, to a particular period, say of twenty, thirty, or a hundred years; let your scrutiny be close, and discover what you may to render the great chart fuller and more accurate than hitherto. If universal history be your subject, you will not go far beyond tracing the bold headlands, while on the other hand, with a small compass of work, you may contribute much information of genuine value to your age. Explore from some starting-point; you can descend upon it like a hawk. You may require some time to study its vicinity, to look back and consider what brought the stream to this point. But your main investigation will be not by exploring to a source, but by following the stream in its onward and downward current. In the present age one must be ignorant of much if he would be proficient in something.

Our chart of history opens like an atlas; it presents page after page of equal size, but with a lessening area for the sake of an increasing scale. One page exhibits a hemisphere, another a continent, another a nation; others, in turn, the state, the county, the municipal unit. From a world we may thus reduce the focus, until we have mapped within the same spaces a town or city, or even a single house; from a population of millions we may come down to a tribe, a family, or even (as in a biography) to a single individual, and we retrace the human course accordingly. Or we may trace backwards, as the genealogist does, in an order reverse to biography or general history. As we have projected, so we work, we investigate. In such an atlas as I am describing, how different appear both civil and physical configurations at different epochs. Compare, for instance, a map of the



United States of our latest date with earlier ones in succession from 1787. Not only in national names and boundaries do they differ, not only in the obscure or erroneous delineation of lakes and rivers in unexplored regions, but in that dotting of towns and cities, that marking of county divisions, which positively indicates the advance of a settled population and settled state governments. Maps of different epochs like these, where they exist, are part of a permanent historical record.

Involved in the study of any civilization is the study of its religion, of its literature, of its political and military movements, of the appliances of science, of the changes and development of trade, commerce, and industries. Each of these influences may be traced apart, or their combined influence may be shown upon the course of some great people. In this present enlightened age, nations intersect one another more and more in their interests, and you may feel the pulse of the whole civilized world through the daily press. How different the task of preparing such a history as the nineteenth century requires, from that of ancient Athens, of China, of mediæval Britain, of early America. But in all tasks unity and selection should be the aim, and above all circumscription. One must measure out his work with exactness, make careful estimates, and work the huge materials into place, besides using his pencil with the dignity and grace of an artist. In a word, he should be an architect. It is because of this union of the ideal and practical that Michael Angelo deserves the first place among men distinguished in the fine arts. And for this reason, too, we may well rank Gibbon as the foremost among historians; as greater, indeed, than Thucydides, Sallust, or any other of those classical writers who have so long been held up for modern reverence. And this is because, with skill equally or nearly as great as theirs, he conceived and wrought out a task far more difficult. In historical narrative the greatest triumph consists in tracing out and delineating with color and accuracy a variety of intricate influences which contribute to the main result. And who has done this so well

as the author of the "Decline and Fall of the Roman Empire," that greatest of all historical themes, that most impressive and momentous of all human events? See the hand of the master unfolding the long train of emperors and potentates; painting the revolt and irruption of distant nations, of remote tribes; gathering upon his canvas the Greeks, the Scythians, the Arabs, Mohammed and his followers, the fathers of the Christian Church, the Goths and northern barbarians who were destined to shape the civilization of modern Europe; leading his readers with stately tread through the whole grand pathway down which the highest type of a pagan civilization sank slowly into the shades and dissolution of the dark ages. I will not deny that Gibbon had faults as a historian; that his stately pomp might become wearisome; that he partook somewhat of the French sensuousness and skepticism which surrounded him as he labored. But of his profound scholarship and artistic skill there can be no question. Contrast with a task like his the simple narrative of some brief strife under a few heroes or a single man—like the history of the Peloponnesian or Jugurthine war, or like that of the Cortes invasion of Mexico, which our own Prescott has so admirably described—and see how immense is the difference. Yet I would not be understood to disparage these other writers with simpler subjects. They have instructed and interested posterity and their own times; their fame is deservedly lasting; there is room in historical literature for them and for all. And our Anglo-Saxon appears to be, of all historical explorers, the best adapted to portray the manners and events of foreign nations and distant times. Thucydides and Xenophon wrote each of his own country alone; and so did Sallust, Livy, Tacitus. But Gibbon perfected himself in a foreign literature and tongue, so as to write of other lands; and so, too, did our Prescott and Motley.

Here let us observe how much easier it is to be graphic, to interest and attract the reader, when one's story has simple unity and relates to personal exploit. Biography, or the study of individual leaders, is at the foundation of the

narratives which are most widely read and most popular; in the Bible, for instance, in Homer, in the wars of Alexander, Cæsar or Napoleon. Biography excites interest because it develops, as in the reader's own experience, the growth of a certain individual life to which all other lives bear but an incidental relation; and for this reason, too, biography is partial. The modern temperament, however, leads us to investigate, besides, the growth of the people who were ruled, the development of their laws, manners, customs, and institutions. In either case the interest that moves the reader is human. That military and political course of a community with which history is chiefly engrossed moves far differently, to be sure, under an absolute monarch than in a democracy; in the former case foibles and caprice are those of a person, in the latter they are those of a whole people. Yet we observe in all but the ruder ages of mankind the refining influence upon rulers which is exerted by philosophy, by religion, literature, and the arts. Note this, for example, under the reign of Solomon, of Pericles, of Alexander, of Constantine; and yet it is a lasting regret to posterity that out of epochs like theirs so little is left on record concerning the daily lives and habits of the people they governed. That must be a rigid tyranny, indeed, whose government has not recognized to some extent the strong though insensible force of popular customs. Custom constantly crystallizes into laws, which the legislature, the court, or the monarch stamps with authority; and thus are local institutions pruned and trained like the grape-vine on a trellis. We find in the most primitive society wills and the transmission of property recognized; buying and selling; trade and commerce (whence come revenue and personal prosperity); marriage and the seclusion, greater or less, of the family circle. How seldom has the reader associated all these with the wealth of Solomon and the Queen of Sheba, with the vicissitudes of Cræsus; and yet it is certain that unless the subjects of monarchs like these had pursued their private business successfully, amassed fortunes of their own, brought up families,

and increased in numbers, the monarch could not have been arrayed with such luxury; for royal revenues come from taxation, and the richest kings and nobles take but a percentage from the general wealth. The customs of one nation are borrowed by others; Moses, Lycurgus, Solon, among the great lawgivers, framed codes each for his own people after observing the institutions of other and older countries, and considering how best to adapt them. Government has rightly been likened to a coat which is cut differently to fit each figure, each nation; and, more than this, the garb itself may differ in pattern, since the object is to clothe different communities appropriately to the tastes and habits of each. We shall continue to regret, then, that the ancient writers have left us so little real illustration concerning the habits of these earlier peoples—how they worked and sported, and what was their intercourse and mode of life. Research in archæology may yet supply such information in a measure; and of the institutions, the embodied customs, we have, fortunately, some important remains. No contribution survives, more valuable to this end, than the books of Roman jurisprudence which were compiled under Justinian. Though one of the lesser rulers of that once illustrious empire, he has left a fame for modern times more conspicuous than that of Julius or Augustus Cæsar; and this is because he brought into permanent and enduring form for the guidance and instruction of all succeeding ages the wisest laws, the best epitome of human experience, the broadest embodiment of customs, which ever regulated ancient society in the mutual dealings of man and man.

As for the progress of our modern society which emerges from the mediæval age succeeding the Roman collapse, its advance in knowledge and the arts, in the successive changes of manners and pursuits, there is much yet to be gathered and exposed to view for illustration; though with respect to England we owe much to Macaulay for setting an example of investigation upon that broader line which Niebuhr and others of his school had initiated for Roman history. And Macaulay achieved the additional triumph of making such

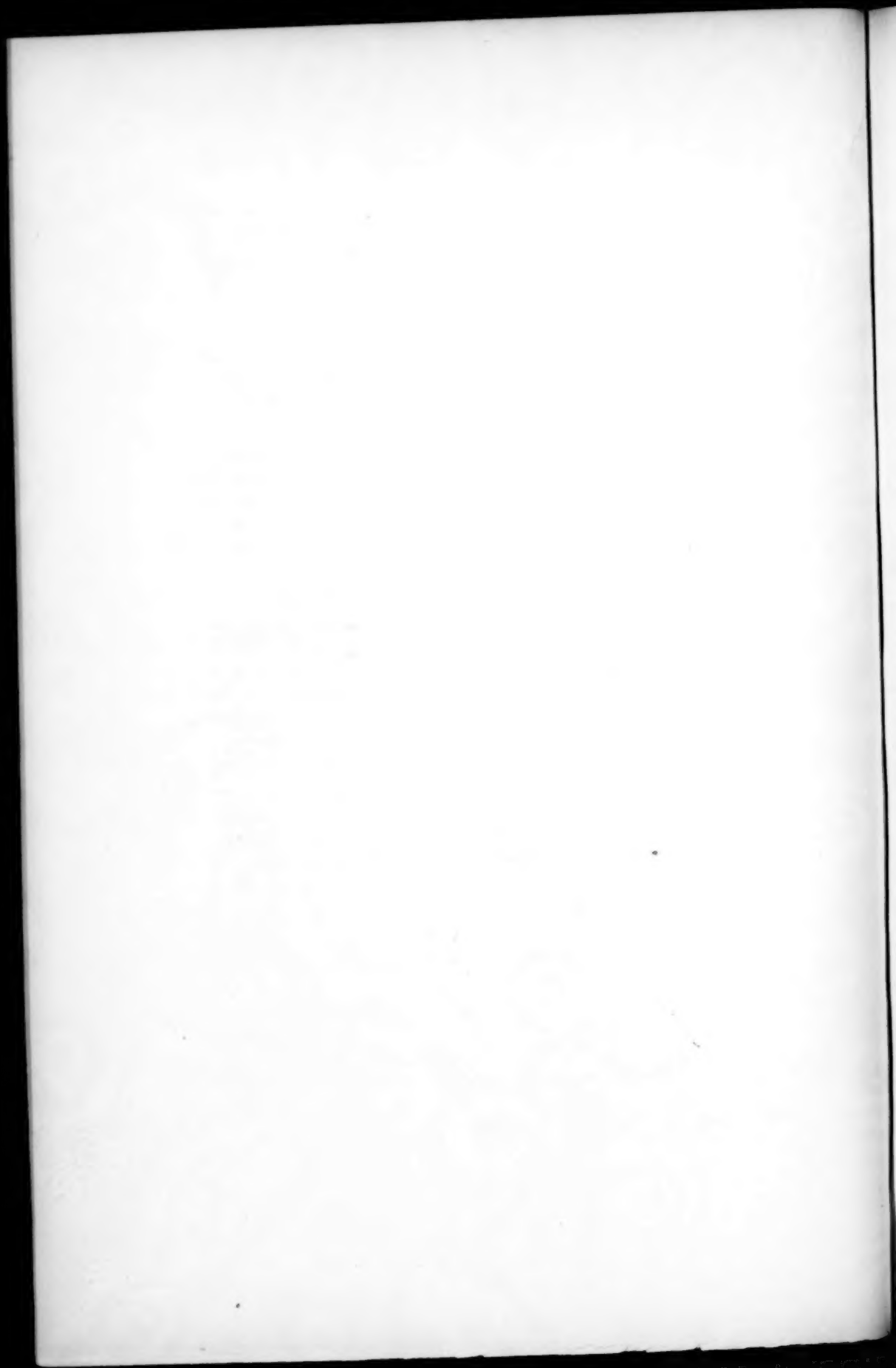
investigation attractive. Statutes and judicial reports (to quote Daniel Webster) are overflowing fountains of knowledge respecting the progress of Anglo-Saxon society, from feudalism down to the full splendor of the commercial age. And from the modern invention of printing, let us add, and particularly since the growth and development of the modern press, we find (with all the faults of fecundity and fallibility which are peculiar to journalism) a picture of the world's daily life set forth which far surpasses in its vivid and continuous delineation any collection of ancient records. Our modern newspaper may pander for the sake of gain; it may avow no higher aim in affairs than to please a paying constituency; and yet, for better or worse, it wields and will continue to wield an immense power. The reporter may be brazen-faced, inclined to scandalous gossip and ribaldry; the news may be spread forth disjointed, founded on false rumor, requiring correction; editorial comments may be willfully partisan, or thundered from the Olympus height of a safe circulation; but even at its worst, so long as it is duly curbed by the laws of libel so essential for the citizen's protection, what with advertisements, business news, the discussion of current topics, the description of passing events, and the transient impression made by them, our newspaper holds the mirror up to modern society; while at its best, journalism sits in her chariot, pencil in hand, like that marble muse herself in our national capitol, over the timepiece of the age. The newspaper's truest revelation is that unconscious one of the passions and prejudice of the times, and of that cast of popular thought under which events were born; it preserves imperishable the fashion prevailing, for posterity to look upon with reverence or a smile. But in the present age the journalist should beware how he presents his columns to bear the double weight of universal advertiser and universal purveyor of knowledge, lest he make a chaos of the whole. As in the former centuries records were scanty, so in the century to come they will be found superabundant, unless fire or deluge diminish them. Pregnant facts, such as in the past we search for in vain, lie buried under prevalent



methods, in bushel-heaps of worthless assertion. To know the old era, you must search with a lantern; to know the new era, you must winnow.

Research is a fitting word to apply in historical studies; for by this word we import that one is not content to skim the surface of past events, but prefers to probe, to investigate, to turn the soil for himself. It is original exploration which makes such studies attractive and stimulating. We walk the streets of buried cities and roam through the deserted houses, once instinct with life, piercing the lava-crust of careless centuries; we place our hearts and minds, richer by accumulated experience, close to the passions and intellects of an earlier age; and we listen to the heart-beat of a race of mankind who reached forward, as our own race is reaching and as all races reach in turn, to catch the omens of a far-off destiny. The grand results and the grand lessons of human life are ours in the retrospect, and in the retrospect alone. And while retracing thus the foot-prints of the past, we shall do well if we deduce the right moral; if we judge of human actions dispassionately and as befits scholars of riper times and a broader revelation; if we keep under due constraint that laudable but dangerous passion for new discovery, so as neither to revive buried calumnies nor to weigh evidence with a perverted bias to novelty. Let our judgment give full force to the presumption that the long-settled opinion is the true one, and let our spirit of research be imbued at all times with the fearless purpose to know and to promulgate the truth.

A DEFENSE OF CONGRESSIONAL GOVERNMENT.



## A DEFENSE OF CONGRESSIONAL GOVERNMENT.

By DR. FREEMAN SNOW, Harvard University.

Democracy, says Sir Henry Maine, is the "most difficult kind of government," and by parity of reasoning, absolute monarchy should be the easiest. Neither of these statements is true universally. There are doubtless countries in which democracy would be out of the question, as there are others in which absolute monarchy would be not only difficult but quite impossible. Yet theorists continue to discuss the question as if it were possible to choose any form of government at will. Such writers, for instance, as Mr. Mallock and Mr. Saintsbury would seem to imply that a monarchy could be established in the United States; or that the French Revolution of 1789, or the English Reform Act of 1832 could have been prevented.

Whatever may be the objections to democracy, it must nevertheless, be accepted as an undoubted fact. It may be a question whether the present tendency towards democracy is an accident, as Sir Henry Maine believed, or that it is the natural development of progressive civilization. There is, speaking historically, good ground for believing that whenever the mass of the people of a state acquire a certain degree of intelligence, they will invariably attempt to make their will felt in the political affairs of the state; and though for a time repressed by military despotism, this must prevail in the end. Then the question will arise, not whether the people ought to rule—the power is in their hands—but in what way they may rule so as best to secure the great ends of government—the happiness of the people and the stability and permanency of the state. As pure democracy is

impossible in states of large area, it becomes necessary for the people to express their will through representatives; and they may do so in very different ways. At the present time there are for this purpose two important methods on trial, namely, the American and the English systems of government. In the English system, the government of the state, in all its breadth and details from foundation up, is entrusted to the majority of the people to be changed or modified at pleasure. In the American system, on the other hand, a limit is set to the power of the majority by establishing certain fundamental laws which can be changed only by a more general assent of the people, and after the most mature deliberation.

"Philosophers," says Professor Bryce, "have long since perceived that the same tendencies to a wanton abuse of power which exists in a despot or a ruling oligarchy, may be expected in a democracy from the ruling majority, because they are tendencies incidental to human nature." Probably the greatest danger to popular institutions, in the present state of civilization, is the unchecked rule of the majority. Even your thorough-going philanthropist, in behalf of his one idea, is often as intolerant of opposition and as ready to resort to tyrannical methods to suppress it, as are those who act in behalf of selfish interests or merely for lust of power. Indeed, it is not infrequent that we see these classes working together. The majority having once made use of illegal means in order to keep its power, will be led further and further on the path of despotism, till, unless checks be found, the government is popular but in name. Every close observer of American institutions will agree with Sir Henry Maine, "that the short history of the United States has established one momentous negative conclusion. When a democracy governs, it is not safe to leave unsettled any important question concerning the exercise of public powers."

The framers of the Constitution of the United States, impressed with the dangers of majority rule, devised a system by which the fundamental laws regulating the relations of



the central government and the states, as well as the rights of persons and property to a large extent, are placed beyond the control of a mere majority of the legislature or of the people. It is a case where, as Webster said, "the people limit themselves. They set bounds to their own power. They have chosen to secure the institutions which they establish against the sudden impulses of mere majorities."

The English system of government, on the other hand, places in the hands of the majority the absolute control of the most fundamental as well as the ordinary laws of the state. As Mr. Dicey says: "Neither the Act of Union with Scotland nor the Dentists' Act, 1878, has more claim than the other to be considered a supreme law. Each embodies the will of the sovereign legislative power; each can be legally altered or repealed by Parliament." The English constitution is the result of a process of slow development under peculiar conditions—conditions which have not existed elsewhere. It has acquired its present form under the influence of royal prerogatives, modified by the action of a powerful aristocracy; and it appears, indeed, to be admirably adapted to an aristocratic government. But it has recently been brought face to face, for the first time, with the possibility of the rule of the people—the masses, in contradistinction to the aristocracy of rank and wealth. And the question which is occupying the minds of many thinking Englishmen is, whether parliamentary government will, under the new conditions, continue to bear the strain of an unrestricted majority rule. "Englishmen of all classes," says Prof. A. V. Dicey, "are becoming aware that whether for bad or good, the English constitution is being rapidly developed in a democratic direction, and Englishmen have, under the guidance of Sir Henry Maine, at last opened their eyes to the fact that the Constitution of the United States shows the actual working of the methods by which the rising flood of democracy may best be guided into safe channels." And again: "The American Republic affords the best example of a conservative democracy." Sir Henry Maine, who was the pioneer on so many lines of legal

thought, was not less so in this field. In the last years of his life he pointed out to Englishmen the dangerous tendencies of their government. "We are drifting," he said, "towards a type of government associated with terrible events—a single assembly, armed with full powers over the constitution, which it may exercise at pleasure. It will be a theoretically all-powerful convention, governed by a practically all-powerful secret committee of public safety." He hoped that England would borrow a few of the American securities against surprise and irreflexion in constitutional legislation, and express them with something like the American precision.

Mr. Bagehot, who has exercised so marked an influence upon American students of government, did not believe in democracy—certainly not as understood in the United States; that is, a government by the people. He nowhere rises above the Whig doctrine of Burke: a government *for* the people, not *by* the people, but by a "select few." In other words, the doctrine of government by a "benevolent aristocracy," which John Morley aptly characterizes as "the theory of the good despot in another shape and with a new face." "Cabinet government," says Mr. Bagehot, "is only possible in what I may venture to call deferential nations,—nations in which the numerous unwise part wishes to be ruled by the less numerous wise part . . . and England is the type of deferential nations." "In a community of respectful poor you may have," he says, "much better government than in one in which 'every man thinks he is as good as every other.'" Mr. Bagehot had no faith in the masses. "As a theoretical writer," he continues, "I can venture to say, what no elected member of Parliament, Conservative or Liberal, can venture to say, that I am exceedingly afraid of the ignorant multitude of the new constituency (that of the Reform Act of 1867). I wish to have as great and compact a power as possible to resist it." And this power he finds in the "theatrical show of society." "Courts and aristocracies have the great quality which rules the multitude, though philosophers see nothing in it." And

again: "Not to put too fine a point upon it, they (the masses) are influenced by rank and wealth."

This is, to say the least, a hopeful view of the English constitution. But is not the fancied continuance of the deference of the multitude for rank and wealth a slender thread upon which to hang the destinies of a great nation? Mr. Bagehot, and apparently Mr. Bryce, would seem to believe, or to hope, that the mass of Englishmen will always remain in a state of respectful ignorance, merely indicating now and then which of the best and wisest statesmen of England they wish to have as rulers. It is needless to say that this is not a picture of democracy. It is rather aristocracy concealed under the forms of democracy, much as the Empire of Augustus was concealed under the forms of the Roman Republic. If these are the conditions necessary to the successful working of cabinet government, it goes without saying that it could not succeed in the United States, where no such conditions exist.

But even Mr. Bagehot, with all his optimism, was haunted by a different vision. "A deferential country," he says, "in which the bulk of the people are ignorant, is therefore in a state of what is called in mechanics, unstable equilibrium. If the equilibrium is once disturbed, there is no tendency to return to it, but rather to depart from it. . . . In communities where the masses are ignorant but respectful, if you once permit the ignorant to begin to rule you may bid farewell to deference for ever. Their demagogues will inculcate, their newspapers will recount, that the rule of the existing dynasty (the people) is better than that of the fallen dynasty (the aristocracy)."

It may be questioned whether this aristocracy has always governed in the interests of the masses. In fact has it not generally resisted popular reforms until revolution was the only alternative? Does not John Morley's statement apply to it: "That every system of government which rests upon the capacity of a very small number and closely recruited body, is sure in time to become a monstrous burden to the community in which it prevails, and to find itself confronted

with popular revolution in a more or less violent form." ? The English aristocracy has shown wisdom in yielding in time to the pressure of the masses, yet, as Mr. Bagehot confesses, they now stand in fear of those very masses to whom they have been forced to grant universal suffrage. And the end is not yet; where will a limit to this yielding to popular demands be found? In face of the rising storm there is no holding-ground for the anchor. Mr. Bryce admits that the United States have safeguards against demagogism which England, France and Italy do not possess.

But something more than mere checks upon the power of the majority is essential to the successful working of popular government; there must be in the people a capacity for self-government. And perhaps the most important difference between the two systems under consideration is the different degrees in which the people take part in the conduct of the respective governments. This question involves the relative merits of so-called congressional and cabinet or parliamentary government, the chief distinction in form consisting in the union or the separation of the administrative and legislative powers. In the American system it is assumed that these functions of government are very different in their natures, and require in their exercise different methods. Legislation calls for deliberation and discussion in which the interests of every part of the country is represented; and therefore "it shows the necessity," says Chancellor Kent, "of a free, full, and perfect representation of the people in the body entrusted with the legislative power." But how can these ends be attained if the legislative body is under the immediate direction of the executive power, which exercises an authority out of all proportion to that of mere legislators? In a popular government legislation should be, within the powers of the legislators, free from extrinsic authority or restraint.

Administration is of a different order. "In the execution of the laws," says Kent, "no discretion is submitted to the executive officer. It is not for him to deliberate and decide upon the wisdom or expediency of the laws." Here

authority and discipline is proper and necessary; to obtain efficiency, the responsibility of administration should be concentrated as much as possible. In absolute monarchies the power to make laws and to execute them resides in the same person. What is distinctive of democracy is, that the people make laws for their own government, and the executive is merely the servant of the people to carry out their will as expressed in the laws. To just the extent that you take legislation from the control of the people and place it in the hands of a powerful executive, though that executive be nominally dependent upon the people, to that extent do you depart from the principles of popular government and approach those of personal government or absolute monarchy. "Unitarianism," says Mr. Dicey, "means the concentration of the strength of the state in the hands of one visible sovereign power, be that power parliament or Czar."

Considered as a mere mechanical arrangement for passing laws and executing them with the least friction and delay, it cannot be denied that the system which unites all the active political powers of government in one man or one body of men has a great advantage over the system in which these powers are separated, and act independently of each other. Indeed we are ready to admit to a very large degree the force of the criticisms of Mr. Bagehot and others upon the American government in these respects. If this were all that government meant, there would perhaps be hardly ground for discussion. But popular government means much more than this. If it is to act in the interests of all classes and at the same time gain stability and permanency, the people should feel that the government is in them and that they are responsible for it; and further, they must possess the capacity to govern. Can these ends be attained if the people put off the responsibility of government upon a few leaders?

To take a concrete case, how does cabinet government work in England? In the first place, it is government by party—and in a sense very different from the application of



that term in the United States. The government of the day—that is to say, the ministry—depends for its very existence on its maintaining control of a majority in the House of Commons. It may be remarked, by the way, that it frequently happens in governments of this kind that a small third party holds the balance of power between the other two, and is able, by voting with the one or the other, to make and unmake ministries at will. When this happens, cabinet government is the most unstable kind of government that exists. The present French Republic is a striking illustration of the difficulty as well of forcing the division of the people into two parties as of carrying on cabinet government in the absence of a compact party majority. The assertion, too, that this system will always bring to the front the ablest men of the country has here proved illusive; the greatest leaders, who have distinct policies to propose, have had to give place to smaller men who are willing to follow instead of leading. The best statesmen of France can no longer afford to enter the cabinet; it has become the grave of great reputations. The small third party led by Mr. Parnell a few years ago demonstrated the weakness of the system in its great stronghold—the home of its birth. Under such conditions, what independence or efficiency can a ministry have? To keep their place, they must, says Mr. Syme, “steer their tortuous course among the party factions, depending for success upon combinations, compromises, promises, and every kind of political strategy.”

But cabinet government is not only government by party, it is government by one or a few leaders of the dominant party. “The principle of parliament,” says Mr. Bagehot, “is obedience to leaders. The majority of parliament obey certain leaders; what those leaders propose, they support; what those leaders reject, they reject. Change your leader if you will; take another if you will, but obey number one while you serve number one, and obey number two when you have gone over to number two. The penalty of not doing so is the penalty of impotence.” Mr. Bryce thinks

that "like other crowds, a legislature must be led and ruled." And he has formulated a theory which he believes to be the "essence of free or popular government, and the justification for vesting power in numbers." "Every question that arises in the conduct of government," he asserts, "is either a question of ends or a question of means." And as the "masses are better judges of what will conduce to their own happiness than are the classes placed above them, they must be allowed to determine ends." But assuming the end to be given, they—the masses—should leave to their leaders—the trained statesmen—the choice of means. The defect in this theory is, in the first place, that it depends for its successful operation upon the continued "deference of the multitude for the classes placed above them— . . . upon the principle of *noblesse oblige*." A principle, by the way, derived from feudal monarchy, which has no existence in the United States, and which ought to be considered a misfortune in any free country. It is doubtful, to say the least, whether it will continue to exist in England for a very long period. Again, what are ends and what means in the intricate questions of government? Are ends whatever the masses believe "will conduce to their happiness?" or, are they only "broad and simple issues," as Mr. Bryce intimates in another passage of his book? Who is to draw the line beyond which the people shall not meddle in questions of politics? The ends which Mr. Bryce supposes the masses to be capable of determining would seem to be nothing more than a blind desire for the improvement of their condition. They may think this will be accomplished by home-rule for Ireland, the disestablishment of the English Church, or war with Russia. These are some of the questions upon which ministers go to the country; and if the people are able to determine such questions, why can they not determine questions of free-trade and protection, which Mr. Bryce says are wholly questions of means? Mr. Bryce has made a step in advance of Mr. Bagehot in trusting the people to determine ends, whatever they may be: why not go one step further, and trust them to determine all ques-

tions of policy? If the people reason about all questions of government, they will be more likely to have intelligent opinions upon questions which especially touch their own welfare; the blind aspirations which are dangerous will yield to reason.

But the English system of government encourages the people not to depend upon their own intelligence in the affairs of state, but to leave the conduct of them to their leaders. On the same principle, the members of parliament select a committee of that body—the cabinet, to whom they leave to a very large extent the government of the nation. As Mr. Bagehot says, they choose their leaders and then obey them. The power of the majority of the people of England is finally centred for all practical purposes, in the prime minister and his cabinet. And “the cabinet,” says Sir Henry Maine, “has taken to itself nearly all the legislative power of parliament, depriving it in particular of the whole right of initiation.” It has come to be the question, not what will parliament do? but what will Mr. Gladstone do? or what will Lord Salisbury do? The result is that only a few score of the members of parliament ever formulate their own opinions, or feel a personal responsibility for the action of that body. More than four fifths of the members do not even take the trouble to attend the sittings of parliament, except when they are summoned by the party whips to come in and be counted when a vote is to be taken. It is related of one of the rank and file of a party, that he once said “he had made it an invariable rule never to be present at a debate, nor absent on a division; and only once in the course of a long parliamentary life did he venture to vote according to his conscience, and on that occasion he voted wrong.” Under the circumstances, it is not astonishing, that he voted “wrong.” Whether this story be true or not, it illustrates the principle necessarily inherent in the system of government by responsible leaders. It fails to call out—indeed it seeks to repress that mental activity, in political matters, of the great body of legislators which is found in the system of congressional government. Mr.

Bryce is authority for the statement, that in political matters the American thinks for himself, while the Englishman does not. This constitutes the very essence of the principle of free government. As Montesquieu said, "dans une nation libre, il est très souvent indifférent que les particuliers raisonnent bien ou mal ; il suffit qu'ils raisonnent, de là sort la liberté qui garantit des effets de ces mêmes raisonnements."

The aim of popular government should be, not how best to govern the people, but how best to teach them to govern themselves. To that end the people should take as large a part as possible in the work of governing, that is to say, in legislation, for democracy means a government of law. It is only in this way that the people come to realize that they are responsible for the conduct of the government—that it is not a thing foreign to them. "En forgeant on devient forgeron," says a French proverb; so, of the people, by force of governing they become capable of governing. Or, as Emerson puts it, "power educates the potentate." Herein we shall find the compensations for the disadvantages of the wide distribution of the responsibilities of government. If our system distributes the responsibilities of government among many, it distributes also the results of responsibility, prudence, and self-reliance. If it places checks upon the will of the people, it gives that will, on the other hand, a wider and safer sphere of activity behind those checks. To put it in the form of a paradox, the American system of government is at once more conservative and more democratic than the English. More conservative, in that the legislature and the executive are, on the one hand, restrained by the superior law of the constitution; and, on the other hand, they are not at each moment dependent upon the changing moods and violent shocks of public opinion. More democratic, in that the people and their representatives take a more active part in the affairs of government, and retain to a greater degree the feeling and the reality of political responsibility. If, as Mr. Bryce says, we are the most law-abiding people in the world, it is

doubtless due to the fact that our institutions have accustomed us to look to the law, self-imposed, as the sovereign ruler, and not to one or a few men. Cabinet government, under the most favorable conditions, will bring to the front the best leaders of the party; but it does not elevate the average ability for leadership. It develops leaders at the expense of the rank and file. It may be that there is greater harmony between the departments of government, less friction, and greater efficiency in legislation; but all this is bought at the expense of the real strength of democracy—the independence and general political training of the many. In Congress, it is true, all members do not take an equal part in law-making—we too have our leaders—but all retain the right of initiation in legislation and the responsibility for it. In a democracy it is not so important that the laws should be perfect as it is that they should emanate from the people. "Democracy," says de Tocqueville, "does not confer the most skillful kind of government upon the people, but it produces that which the most skillful is frequently unable to awaken; it instills throughout the social body a restless activity, a superabundant force, and energy, which are never seen elsewhere."

The critics of our system of government would seem to be too intent on observing the working of its mere machinery, without considering sufficiently the more remote and less obvious effect produced upon society as a whole. The best government is not necessarily that which for the moment is the most powerful, or even the most orderly; these ends might be best attained by an absolute monarchy, or by an intelligent aristocracy. But assuming democracy as a necessary fact, it ought not to be doubtful that the best form is that which, though less systematic, more prone to make mistakes if you will, yet, in the long run, most elevates and strengthens the political character of the people, and thus broadens the base and gives firmness to the structure of government.

Mr. Bagehot, Mr. Bryce, and their followers in this country, in contemplating the English constitution, seem



always to be looking backward instead of forward ; they cannot bring themselves to see anything in England's future different from her past. The system of choosing leaders, and leaving everything to them has worked well in the past, because the intelligence of the constituencies was of a high order ; but with the extension of the suffrage, and the consequent lowering of the average intelligence of the constituencies, we should expect a corresponding change in the character of the leaders chosen. Is it inconceivable, indeed, that Mr. Bagehot's "unstable equilibrium" should one day be disturbed, and that the people, in their search for leaders, should put into the hands of "demagogues" the supreme power of the state—and a supreme power upon which there is no check ? After Mr. Gladstone, why not John Smith, the socialist ? Macaulay's criticism of the American constitution that it was "all sail and no anchor," would then be more appropriately applied to the English constitution.

A considerable number of Americans, observing the grave political evils present in the nation, are beginning to look upon them as inherent in our form of government, and to see in the American Constitution, if not a total failure to meet the wants of enlightened democracy, at least a very inefficient and inadequate form of government. At the same time, impressed with the greater apparent simplicity and efficiency of the English government, they are inclined to see in the system of responsible leaders a cure for our political evils. They are frightened at the turmoil of democracy in America, and believe that our only safety lies in subjecting the multitude to the guidance of authoritative leaders. Prof. Woodrow Wilson believes that nothing else will prevent the disintegration of society in the United States. Our political parties seem to him "like armies without officers, engaged in a campaign which has no great cause at its back." And he regrets that "we have no supreme executive ministry, like the ministry of the Crown over sea, in whose hands is the general management of legislation." That this remedy would correct the faults of our government is extremely doubtful, and we should run

the risk of destroying the safeguards which have cost a deal of pains to establish. And we shall find, after all, the vital forces of democracy in America to consist, not in organized parties, not in obedience to leaders, or parliamentary discipline, but rather in the capacity of the people for self-government—though it be not the most perfect kind—and especially in their local bodies, the State, the county, and the town.

In our federal government, the importance of which our critics would seem to underestimate, we have the most thorough-going system of local self-government that has ever been tried on a great scale. It should not be forgotten that we have forty-two individual States, which are really nations in themselves, with all the machinery of government necessary for independent existence. They possess in the aggregate forty-two legislatures, with more than six thousand legislators, actively at work year by year, whose powers extend to all the various interests of society. There are also forty-two governors, or executive officers, whose duties are similar in character to those of the President, and the same number of State supreme courts, with subordinate tribunals. Add to these the subdivisions of the States into counties, towns, and districts, which manage their own more local affairs, and it will be seen that we have a very widely extended political training-school, and one that is brought very close to the people. It is evident that the introduction of cabinet government into the United States would essentially modify if it did not wholly undermine the federal system. The powers of the President would of course be transferred to the leader of Congress. In regard to the Senate, one of the chief bulwarks of federalism, there is scarcely more doubt. It would be impossible in practice to hold a ministry responsible at once to each of two co-ordinate and equal legislative chambers; to make them responsible to the House of Representatives alone would be the death-blow to the Senate as a legislative body, as has been the case with the House of Lords in England. And the power which the Senate exercises over the executive department would be wholly incom-

patible with cabinet responsibility. "The United States," says Mr. Bryce, "is the only great country in the world in which the two Houses are equal and co-ordinate. Such a system (cabinet government) would hardly work, and therefore could not last, if the executive were the creature of either or of both, nor unless both were in close touch with the sovereign people." With the decline of the power of the Senate, the authority of the States would undoubtedly be materially weakened; and lastly, as Mr. A. L. Lowell points out in an admirable essay on "Cabinet Responsibility," the Supreme Court could hardly hold its independent position in the face of the supreme political power of the ministry. Mr. Bryce believes, indeed, that we make a mistake in observing State lines in the selection of our congressmen; and Mr. Bagehot considers second chambers an evil.

Are those Americans who favor cabinet government for the United States really prepared to accept all its consequences?

There is another class of critics who hope that we may secure the benefit of leadership without any radical change of the Constitution. This is to be brought about by giving to the members of the cabinet, as now constituted, seats in the legislative chambers, with the right of debate. The result of such a change it is difficult to foretell. Mr. Bryce thinks "it might lead to changes more extensive than its advocates seem to contemplate." If it should work into the system of ministerial responsibility (as some of its advocates hope) it would, as I have attempted to show, be injurious, if it did not, it would certainly fail to create a more authoritative leadership in legislation. We hear often of the want of order and efficiency in legislation, of the "chaotic condition of the congressional mob, etc."; but we are not told how irresponsible cabinet officers, by merely having seats in the houses, would be able to bring order out of chaos, and make of the "congressional mob" a disciplined and efficient body. It is hardly supposable that congressmen would voluntarily abdicate their power over legislation in favor of the executive department. These critics doubtless over-

estimate the effect of mere debate in the legislature. They have in mind the parliamentary system in England, where the words of the leader are in the nature of a command to his followers; when he speaks in parliament upon any subject, he formulates his policy on that subject, and his opinions are therefore awaited with great interest. But in America, as members of Congress, and the people generally, think for themselves, they form their opinions without waiting for congressional speeches to give them the cue.

But it is said the cabinet ministers would thus form a convenient connecting link between the executive and legislative departments, and would be in a position to advocate more efficiently the executive policy. It was not intended by the founders of the government that the President should have a distinct legislative policy to be carried out by executive authority. The President may advise, but it would be contrary to the principle of the separation of powers for him to use executive influence in the field of legislation. Why is it taken for granted that no one but the President understands the needs of the country, or knows what policy to pursue or what laws to make? Except as to the details of administration, legislators, representing all parts of the country, ought to understand the questions requiring legislation better than the President. In regard to subjects about which the executive can, from his position, give needed information, there ought to be no great difficulty. One trouble has been, perhaps, that hitherto the executive department has been too secret in its working. If its proceedings were made more public—some method of publicity should be provided by law—there would be found to be no great principle involved that every statesman ought not to understand sufficiently for all purposes of legislation. It is not necessary that he should understand all the details of administration. Even a cabinet minister, as Sir George Lewis said, is not expected "to work his department, but to see that it is worked." If it be true that Congress is really incompetent to make the necessary laws—not to say the wisest—then we ought to acknowledge at once that the

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experiment of popular government in the United States is a failure ; nor will the remedy be found in transferring the powers of Congress to the executive.

But what is the evidence of the incompetency of Congress? Does not the body of statutes which it has worked out during a century, though not perfect, show that congressmen have understood the needs of the country under the conditions imposed upon it? It is a common remark of Europeans that the circumstances have all been favorable ; that had the United States not been a country of boundless wealth, and so placed as not to be affected by international complications, the mistakes they have made would have been fatal. Had the conditions been different, a different solution of political questions would have been called for, and it is not unreasonable to suppose that a solution would have been found. But it is a mistake to suppose that the conditions have been most favorable. Few nations have had a more difficult problem to deal with than that of slavery as it existed in the United States. Again, during the past seventy years, more than fourteen millions of foreigners, of the more ignorant classes, and wholly inexperienced in the affairs of government, have immigrated into the United States. In 1880, nearly one fourth of the voting population of the nation were foreign born. And yet these millions of aliens have been converted into loyal citizens. The successful experience of a hundred years should go for something ; and who is prepared to prove that the result would have been better under a different system, if, indeed, a different system had been possible?

Mr. Bryce has been a close observer of American institutions, and has penetrated the weaknesses of our system with a keenness hardly paralleled ; on the other hand, he has as clearly pointed out its advantages. And after reading his "American Commonwealth," one is almost in doubt whether, even in his own opinion, the good does not outweigh the bad, and that on the whole our system is not safer than the English. Speaking of the American Constitution, he says : "It forms the mind and habit of the people ; it trains them



to habits of legality; it strengthens their conservative instincts, and their sense of the value of stability and permanence in political arrangements, etc." Again: "If a people desires perfect stability, it must put up with a certain slowness and cumbrousness; it must face the possibility of a want of action when action is called for. If, on the other hand, it seeks to obtain executive speed and vigor by a complete concentration of power, it must run the risk that power will be abused and irrevocable steps too hastily taken." And finally: "The American people have a practical aptitude for politics, a clearness of vision and capacity for self-control never equalled by any other nation. . . . Such a people can work any constitution." Of the English Constitution, Mr. Bryce says: "It would any where but in England be full of difficulties and dangers. It stands and prospers in virtue of the traditions that still live among English statesmen and the reverence that has ruled English citizens." It seems quite clear from these statements that Mr. Bryce would not advise Americans to change their system. What he does say is that our system would not work if we were surrounded by powerful and jealous neighbors, as in the case of European states. When he says that the Americans could work any constitution, he forgets that the political character of the people has been largely formed by the character of the institutions of the country; and in turning over the conduct of the government to leaders, they would lose the very thing which has formed their character. The American people are not inherently so much superior to other peoples; they are in fact endowed with the virtues and vices of human nature.

Let it not be implied that, in defending the form of the American Constitution, the writer of this essay is blind to the very serious political evils which exist in the government. What is insisted upon is that the fault is not in the Constitution—worse evils might exist under the English system,—but rather in the vicious methods of procedure under it. Now, the remedy is to be sought, not in changing the institutions, but in changing the spirit which gives them vitality. If the people, and particularly the younger gener-

ation, once come to see clearly the source of the bulk of our political evils, they will understand that their reform is a comparatively simple matter, and lies wholly within their reach.

Party government as carried on in the United States during the last sixty years, has undoubtedly tended to the corruption of the political morality of the people. While the question of slavery divided the country, party strifes came to have a most intolerant and hostile character. And the slavery struggle left us as a legacy an exaggerated party spirit, which is kept alive when the causes that produced it no longer exist, by the honest prejudice of some, and the self-seeking duplicity of others. It was natural, perhaps, under such great provocations, that the dominant majority should become intolerant, and use every possible vantage to overcome the opposition of the "wicked" minority. It became the custom for the executive in conjunction with the majority in congress to make use of the whole civil service of the nation to further party ends. The "spoils system" was the natural outgrowth of this kind of party government. But the "spoils system," though the outcome of party strife, came to be the only practical reason for the ante-bellum division of parties. From an effect it has come to be a cause. The continued existence of this principle has lowered the moral tone of the nation in political affairs. In the professional politician the lower moral tone appears in an active form, while in the great body of honest citizens, it appears in the form of indifferentism. The "spoils system" is also the chief cause of inefficiency in legislation. The most important questions before Congress are too often viewed from a partisan rather than from a national standpoint; it is difficult to get an independent and unbiassed vote upon public measures. In view of these facts, it is not surprising that there should be a desire on the part of many well-disposed persons to see Congress subjected to the guidance of an authoritative leader. This, however, as I have attempted to show, would be changing the present evil for one much more dangerous to our institutions. No doubt one of the most difficult problems of democracy is to secure efficient legislation without a too great concentration of leg-

islative powers. Much must necessarily be left to the discretion and prudence of the people. We may often become impatient of delay when the need of reform seems so plain. But it should not be forgotten, that under our system, the people must be convinced; that they form a great body which it is not easy to move. When they do move, however, it is with a force that is irresistible. The present movement for reform in the civil service and the ballot shows that the people are gradually awakening to the necessity of eradicating the evils which crept into the government under the shadow of the absorbing issues of the past, and which then seemed relatively unimportant. The ballot reform will be a long step toward correcting the evils which have grown up about the methods of expressing the people's will, and in checking the power of the local politician. And the still more vitally important movement for the reform of the civil service will have a far reaching effect. It is a too-common mistake to suppose such reform to have for its chief object the improvement of the civil service. Incidentally this will be accomplished, but the great end to be gained is the reform in legislation—the most important thing in a democracy. It is in this field that the spoils system has had its most baneful effect; under its régime the national legislature has become a huge machine for distributing post-offices. If we would have honest and efficient legislation, we must take from legislators the usurped functions they have come to exercise in controlling executive patronage in their respective States and districts. Let the people send their representatives to Washington for the purpose of making laws, and nothing else, and we shall find that congressmen will not only be able to give us more intelligent legislation, but they will find ways of reforming the methods of procedure. These reforms will probably tend to break down or modify the spirit of partisanism which now exists. As government in the United States does not depend for its existence upon party, there is no reason why parties may not divide upon questions of policy, and cease to exist when the object for which they were organized is accomplished, as was the case with the Abolitionist party.